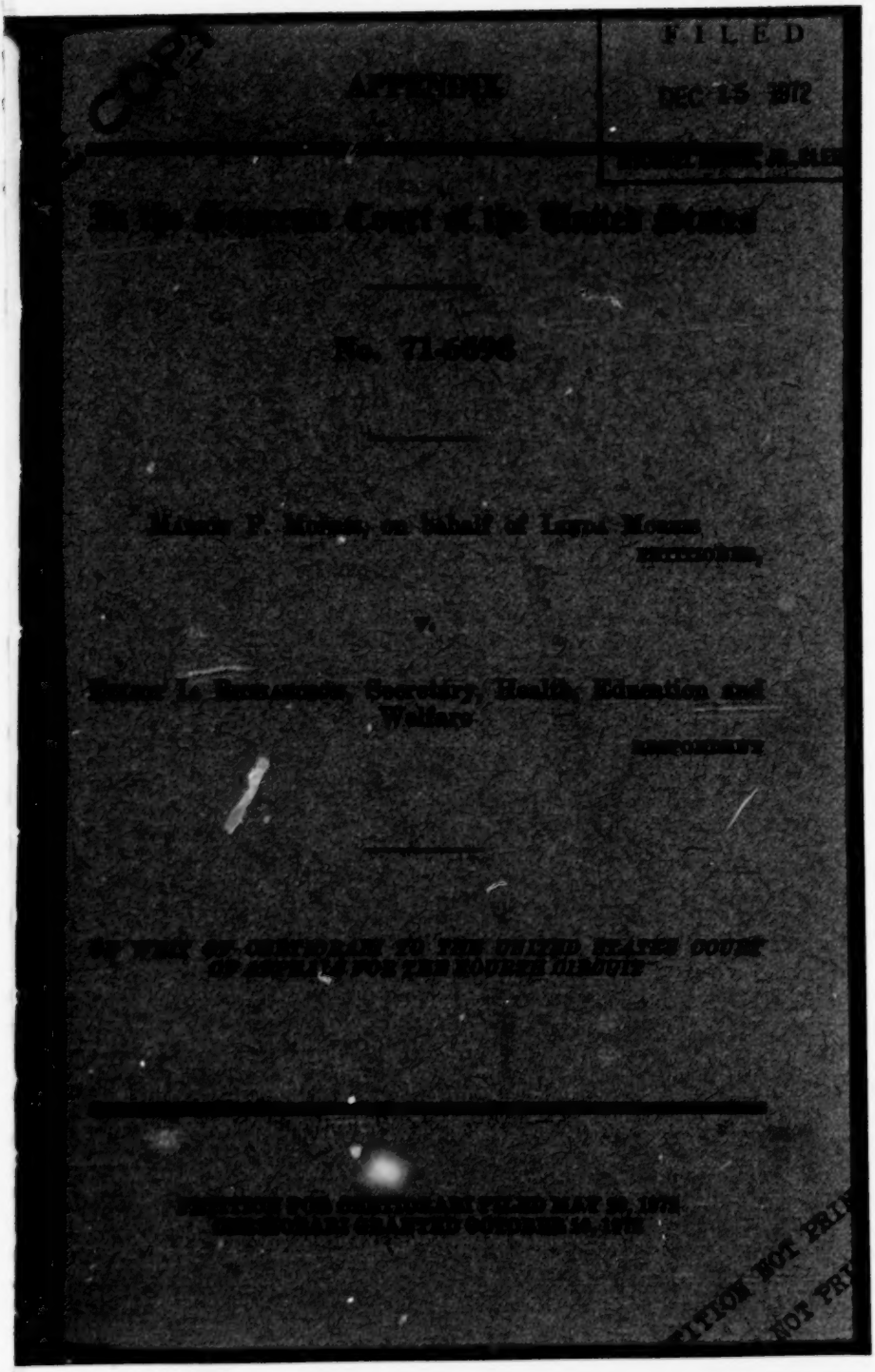

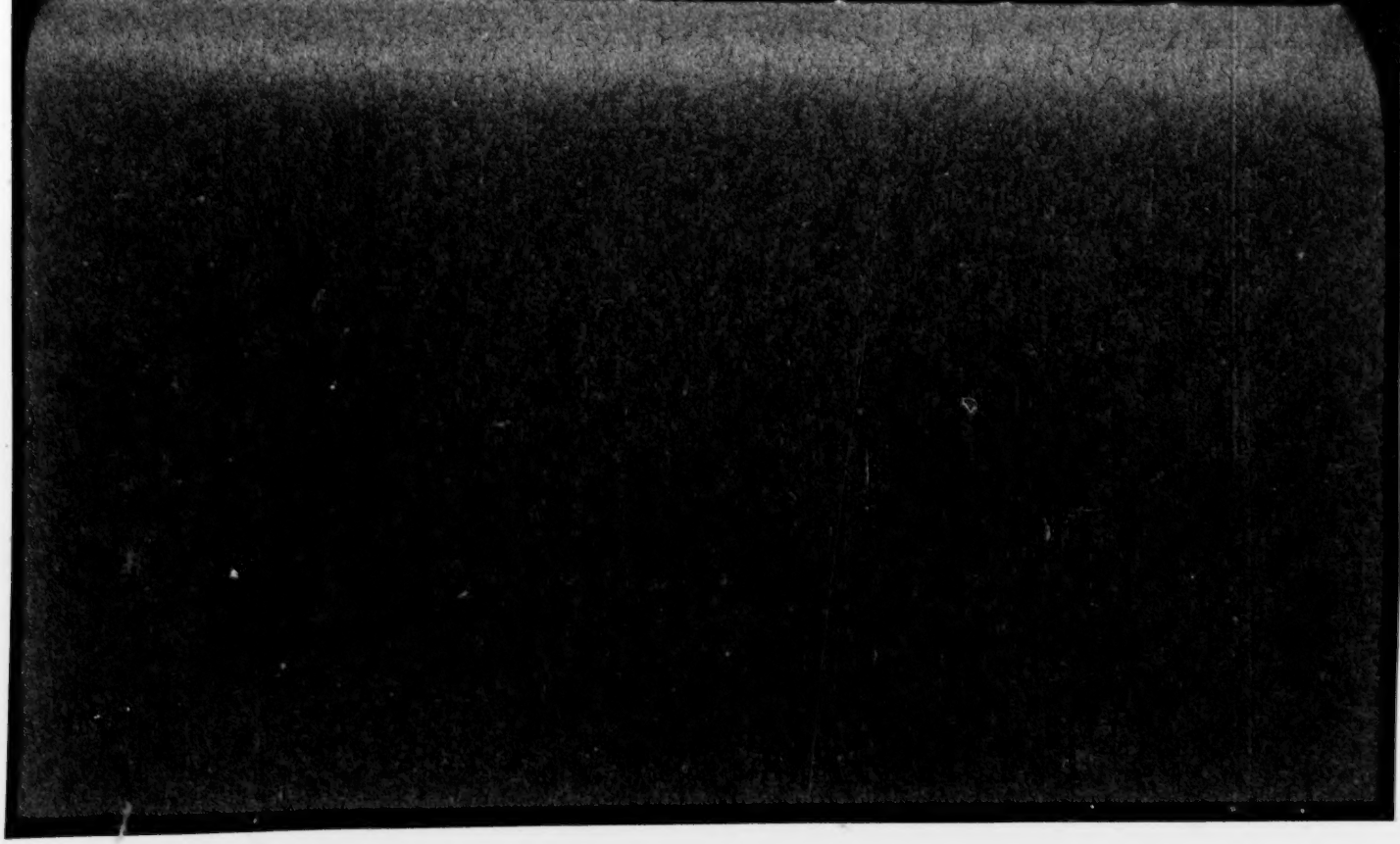

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Relevant Docket Entries in the Court of Appeals and the District Court

In the United States District Court,
Southern District of West Virginia,
Civil Action No. 69-145 CH

1969	
July 9	Filed complaint
9	Issued summons and 3 copies (Ret. 60 days)
Aug. 5	Filed Marshal's return on summons (served U.S. Atty., Atty. Gen. & Secy HEW)
Aug. 25	Order extending time for defendant to file answer to and including November 7, 1969
25	Filed motion of Asst. U.S. Atty. for an extension of time to file answer
Oct. 30	Filed Answer of Defendant, with certificate of service, and transcript of proceedings
Dec. 16	Filed Defendant's Motion for Summary Judgment, with certificate of service
1971	
Apr. 29	Filed Court's Memorandum Opinion
May 10	Order, defendant's motion for summary judgment overruled, final decision of Secretary reversed and remanded, etc.
July 6	Filed Defendant's Notice of Appeal, together with letter of notice to counsel
Aug. 9	To preparing and certifying record on appeal to Clerk, U.S. Court of Appeals at Richmond

IN THE COURT OF APPEALS FOR
THE FOURTH CIRCUIT, No. 71-1757

1971

Aug. 10	Record on appeal in one volume (Volume I) filed and appeal docketed
10	Administrative transcript in one volume (Volume II) filed
Sept. 24	Brief for appellant filed
24	Appendix for appellant filed
Oct. 20	Brief for appellee filed
Dec. 6	Cause argued before Bryan, Winter, and Butzner, Circuit Judges, and submitted

1972

Jan. 28	Opinion of the Court filed per curiam, Bryan, Circuit Judge, dissenting
28	Judgment filed, reversing judgment of the District Court
Feb. 14	Petition for rehearing filed
Feb. 22	Order denying petition for rehearing with Judge Bryan dissenting, filed
22	Certified copy of the judgment and printed copy of the opinion transmitted to the Clerk of the District Court at Charleston, West Virginia

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration
Bureau of Old-Age and Survivors Insurance

100

DISABILITY DETERMINATION

(For OASI Use)

3

NAME OF APPLICANT: MARION P. MORRIS
SOCIAL SECURITY NO.: 232-18-6110
ADDRESS: Box 85 Eunice West Virginia
DATE APPLICATION FILED: 6/8/57
DATE OF BIRTH: 11/8/04

FINDING OF DISABILITY

1. In accordance with sec. 216(i) of the Social Security Act, and upon consideration of all the facts, it is determined that the applicant

☒ Was under a disability from 9/3/53 (DATE)

☐ Was not under a disability

2. Diagnoses: Residual fracture left [illegible] Anxiety reaction Duodenal Ulcer Quiescent

BASIS FOR DETERMINATION

3. (a) Applicant alleges inability to engage in substantial gainful activity beginning 9 (MONTH) [illegible] (DAY) 53 (YEAR) at age 49

(b) There are no earnings of consequence after the alleged date of disability ☒

(c) There are significant earnings after the alleged date of disability. See "Remarks" below. ☐

(d) Occupation and education: Laborer - 8th Gr.

(e) Remarks:

Med Evidence shows 50% partial Disability of spine and 30% of disability as per schedule, Nervous tension & severe stomach disorder. Ulcer & gall bladder trouble. Ulcer and cough (Smoker's throat). On occasion if employed to the work Bank of education and vocational background w/in limitations to FINDING AS TO DISABILITY PERIOD under schedule

CONTINUED ON ATTACHED SHEET

5. Applicant had 7 Q/C in the 40 quarters and 6 Q/C in the 13 quarters ending 9/53

6. Applicant ☐ does not ☐ does have the qualifying quarters for coverage. ✓

7. A period of disability ☐ is not established ☐ is established from 9/3/53 to Continuing

☑ DDO ☐ AO

LTR. NO. F/2

PAR. NO. 136 A (1)

8. REMARKS: Hrg. review OA-D83 dated 6/11/57

EXHIBIT 9 (1 pg)

RE-EXAM REQUIRED ON: (DATE) None

SIGNATURE: E H Osborne
TITLE: Disability Examiner
DATE: 6/11/57

SIGNATURE: K Merriman
TITLE: Disability Reviewer
DATE: 6/15/57

FOR AO USE

FORM OA-D832 (12-55)

POOR COPY

IN THE JUVENILE COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN THE MATTER OF:

The petition of Marion P. Morris and Dora Elizabeth Morris, his wife, for permission to adopt Linda Gail Kinder, a minor child, and the change of her name to Linda Gail Morris, filed in the Juvenile Court of Raleigh County, West Virginia.

On the 13th day of October, 1966, the petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, by their counsel, Donald E. Jarrell, presented to the Judge of said Court, their petition, duly verified, praying that they be granted permission and allowed to adopt Linda Gail Kinder, a minor child, and to change her name to Linda Gail Morris; the mother of said child being Rosemary Morris Kinder, and the father of said child being Paul Ray Kinder, and moved the Judge of said Court to file said petition and refer the matter to Joe Asbury, Town Policeman for Whitesville, West Virginia, for investigation and report to this Court, and set the same down for hearing, which motion was granted by an order entered was ordered filed and referred to Joe Asbury, Town Policeman for Whitesville, West Virginia, for investigation and report to this Court, and said matter was set down for hearing on the 13th day of October, 1966, at 2 o'clock.

On this, the 13th day of October, 1966, said petition accordingly came on to be heard, and the following were present at the hearing: the petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, in person, and Donald E. Jarrell, their counsel.

Thereupon the Judge of said Court proceeded to a full hearing of the petition, and the petitioners were examined by said Judge under oath upon the matters touching the subject of this proceeding, and Joe Asbury, Town Policeman for Whitesville, West Virginia, having made an investigation, reported favorably for this adoption, no other party interested being present, in person or by counsel.

Upon consideration of all of which the Judge of said Court is of the opinion that the facts stated in the petition are true; that the mother of said Linda Gail Kinder is

Rosemary Morris Kinder, and the father of said child is Paul Ray Kinder; that said petitioners have had uninterrupted custody of said minor child since the 29th day of November, 1965; that petitioners are of good moral character and are of respectable standing in the community in which they live; that petitioners are able to maintain and educate the said minor child properly; and that the best interests of said child will be promoted by the Court's permitting and allowing the said petitioners to adopt said child; and that said minor child is not possessed of any property.

It is therefore adjudged, ordered and decreed that the said petitioners, Marion P. Morris and Dora Elizabeth Morris, his wife, be, and they are, hereby granted permission and allowed to adopt the said Linda Gail Kinder, a minor child, and the said minor child's name is ordered changed to Linda Gail Morris, by which name she shall hereafter be known.

And it is further adjudged, ordered and decreed that from the date of this decree the rights, duties, privileges and relations heretofore existing between the said minor child and her parents by adoption shall henceforth, in all respects, be the same, including the right of inheritance, as if the said child had been born to the adopting parents, Marion P. Morris and Dora Elizabeth Morris, his wife, in lawful wedlock, except as otherwise provided by statute.

From said petition and the evidence adduced at the hearing thereon, the Judge of said Court finds that the said Linda Gail Kinder, an infant child was born on the 7th day of March, 1965, at Parma Community General Hospital, Parma, Ohio.

It is further adjudged, ordered and decreed that all the matters adjudged, ordered and decree in this hearing are to be filed in the Clerk's Office of this Court in the book provided for the recording of adoptions and the necessary information be delivered to the Registrar of the Bureau of Vital Statistics, Charleston, West Virginia, as required by law.

ENTER:

/s/ Harry L. McCreery
HARRY L. MCCREERY
Judge

Department of Health, Education and Welfare
Social Security Administration

APPLICATION FOR CHILD'S INSURANCE BENEFITS
(For Children of Living Wage Earner or Self-Employed Person)

Form Approved
Budget Bureau No. 72-R130.12 90
(Do not write in this space)

2/28/68
Pawtucket, R.I.

NOTICE - Whoever (a) makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act, or (b) who, having received a payment for the use and benefit of another person, knowingly and willfully uses such payment for other than the person for whom it is received, is subject, under the Social Security Act, to a fine of not more than $1,000 or 1 year's imprisonment, or both.

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (hereafter referred to as "Worker")	SOCIAL SECURITY NUMBER
Marion P. Morris YOUR NAME IN FULL	232 | 18 | 6110

I hereby apply on behalf of the child or children listed in Item 1 below, for all insurance benefits payable to them under Title II of the Social Security Act, as amended. (Answer the questions on this form with respect to yourself if you are applying for a child's benefit on your own behalf--for example, if you are a student age 18 to 22 or a disabled child age 18 or over.)

1. Enter below the information requested for ALL unmarried living children of the worker who during the last 13 months (counting the present month), were (a) under age 18, or (b) age 18 to 22 and attending school, or (c) age 18 or over and under a disability (which must have begun before age 18). If you enter information for a child age 18 or over, check "student" or "disabled" if such child is a student or disabled. Include stepchildren, adopted, and illegitimate children. If you are not applying for any child you name, enter the child's name under "Remarks" (page 4 of this form) and explain why you are not applying for such child. (You may apply for a child even though you do not wish to be the payee for the child's benefits.)

FULL NAME OF CHILD (Please list children in order of birth, beginning with the oldest)	DATE OF BIRTH (Mo., day, yr.)	CHECK (✓) IF CHILD 18 OR OVER IS STUDENT OR DISABLED		CHECK (✓) THE COLUMN THAT SHOWS THE CHILD'S RELATIONSHIP TO THE WORKER			
		Student	Disabled	Legitimate	Stepchild	Adopted	Illegitimate
Linda A. Morris	3/7/63					✓	
				EXHIBIT 5 (4 pages)			

2. If any children in item 1 are stepchildren of the worker enter the date the worker married the natural parent — DATE OF MARRIAGE: n/a

3. If any children in item 1 are adopted children of the worker, enter below the name of each such child and the date the worker adopted him (her).

NAME OF ADOPTED CHILD	DATE OF ADOPTION
( )	
Pierce	

Form OA-C1 (Over)

POOR COPY

4. **Have any children in Item 1 ever been adopted by someone other than the worker?** ☐ Yes ☑ No

(If "Yes," enter the following information)

Name of Child	Date of Adoption

5. **(a) Have all of the children in Item 1 lived with the above worker during each of the last 12 months (counting the present month)?** ☑ Yes ☐ No

(If "No," enter in the chart below the information asked for.)

Name of Child Who Did Not Live With The Worker in Each of The Last 12 Months	Persons With Whom Child Lived			Last Each Month In Which This Child Did Not Live With The Worker
	Name	Address	Relationship to Child	

6. **If the above worker is the mother, adopting mother, or stepmother, which of the children in Item 1 were:**

(a) Living with their father or adopting father? *(If none, write "None")*

(b) Receiving contributions from their father or adopting father? *(If none, write "None")*

7. **Has any child in Item 1 ever had a social security number?** ☐ Yes ☑ No

(If "Yes," enter the following information for each child having a number.)

Name of Child	Social Security Number

8. **Has anyone ever before filed an application for social security benefits on behalf of any child in Item 1?** ☑ Yes ☐ No

(If "Yes," enter below the name(s) and social security number(s) of the person(s) on whose earnings record any other claim was based.)

Name of Wage Earner or Self-employed Person	Social Security Number
this Case	

9. **Do you understand that all payments made to you on behalf of a child must be spent for his present needs or (if not presently needed) saved for his future needs, and do you agree to use the benefits that way?** ☑ Yes ☐ No

10. **Do you agree to notify the Social Security Administration promptly when you no longer have responsibility for the welfare and care of any child for whom you are filing?** ☑ Yes ☐ No

If you are filing ONLY for a child age 18 or over who is disabled, you may omit items 11, 12, and 13 and go on to item 14. In all other cases, items 11, 12, and 13 must be answered. 42

Some or all of a child's benefits may not be payable if such child works for more than the monthly limit on employment (as defined below) or renders substantial services in self-employment in any month, and has earnings in excess of the exempt amount (as defined below) for the taxable year.* This applies to all employment and self-employment, whether or not covered by the Social Security Act. 140 1680

The "monthly limit" is $100 per month for months in a taxable year ending prior to 1966 and $140 per month for any taxable year ending after 1965. If the taxable year is a calendar year, the $140 amount is effective January 1966.

The "exempt amount" of total earnings which a child may earn without deduction from benefits is $1,200 per year for a taxable year which ends before 1966. It is $1,500 per year for taxable years ending after 1965. If the taxable year is a calendar year, $1,500 is the exempt amount beginning 1966.

11. **(a) Do you expect the total earnings of any child to be more than the exempt amount this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.)** ☐ Yes ☑ No

(If "Yes," answer (b) and (c) below. If "No," go on to item 12.)

(b) Enter the name of each child who will earn more than the exempt amount this year and the amount of expected earnings.

Name of Child	Expected Earnings
	$
	$

(c) Did every child named in (b) earn more than the monthly limit in employment or render substantial services in self-employment in all months of this year including the present month? ☐ Yes ☐ No

(If "No," enter the information asked for in the chart below.)

Name of Child	List Each Month That Child Did Not Earn More Than The Monthly Limit in Employment and Did Not Render Substantial Services in Self-Employment

12. **Did any child earn more than the exempt amount last year?** ☐ Yes ☑ No

(If "Yes," enter the information asked for in the chart below.)

Name of Child That Earned Over The Exempt Amount Last Year	Total Earnings of Child	List Each Month That Child Did Not Earn More Than The Monthly Limit in Employment and Did Not Render Substantial Services in Self-Employment

*If the child's last statement of his self-employment income in the same taxable year is not for the full 12 months, or if the child's self-employment income for the taxable year is for a period other than 12 months, enter here the months of the child and the months of the last year in which

LIST BY CHILD AND MONTH FISCAL YEAR ENDS

(Over)

POOR COPY

13. An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which any child earned more than the exempt amount and received a benefit payment for a month in that year. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ADDITIONAL MONTHLY BENEFITS. 93

Do you agree to file the annual report of earnings when required? ☒ Yes ☐ No

Complete Item 14 in all cases.

14. The events listed below end (or may end) a child's entitlement to Social Security Benefits. If any one of these events occurs, you must notify the Social Security Administration. For some events, there are certain exceptions to the general rule that the event ends entitlement. Such exceptions are explained in the printed reporting instructions which will be given to you. However, you must report an event even if you believe an exception applies. The Social Security Administration will advise you what additional information and evidence, if any, is needed, and will give you a decision on whether the child's benefits may continue.

If you are receiving benefits on behalf of:

(a) Any child, – report if the child MARRIES, DIES, or is LEGALLY ADOPTED.

(b) A child age 18 to 22 entitled as a full-time student, – report if the child STOPS ATTENDING SCHOOL, REDUCES HIS ATTENDANCE, or CHANGES SCHOOLS.

(c) A child age 18 or over entitled because he is under a disability, – report if the child's DISABLING CONDITION IMPROVES, the child GOES TO WORK, or – if the child is now hospitalized – when the child is DISCHARGED FROM THE HOSPITAL.

Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive for a child if the check is for a month in or after a month in which any of the above events occurred? ☒ Yes ☐ No

REMARKS: (This space may be used for explaining any answers to the questions.)

The Adoption was not Supervised by a public or private child placement Agency.

Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If mark (X) Application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.

1. NAME

ADDRESS (Number and Street, City, State and ZIP Code)

2. NAME

ADDRESS (Number and Street, City, State and ZIP Code)

SIGNATURE OF APPLICANT (Write in ink)

SIGN HERE ➧ 51 40 A

Marion Pittman

MAILING ADDRESS (Number and Street, P.O. Box, or Rural)

Box 357

CITY, STATE AND ZIP CODE

Whiteville, N.C. 28472

DATE (Month, Day and Year) 8-22-68

TELEPHONE NUMBER

ENTER NAME OF COUNTY (or similar) IN WHICH YOU NOW LIVE

Raleigh

DETERMINATION OF DISALLOWANCE

DISTRICT OFFICE	D/O CODE	WAGE EARNER'S NAME	ACCOUNT NO
Beckley W Va	313	Marion P Morris	232-18-6710
PAYMENT CENTER			HF- / / - /
BCI			

List only the basic reason in the CODE NO. block below. If this code number requires a fill-in, enter the information under "Remarks." Show any additional reasons under "Remarks."

SYMBOL	CODE NO.	NAME AND ADDRESS OF CLAIMANT	FILING DATE
HCl	F-10	Marion P Morris for Linda G Morris Box 367 Whitesville, W. Va. 25209	02/28/69

Fill in when any disallowance code 01-26 is listed:

WAGE EARNER BORN ON	WAGE EARNER DIED ON

Number of quarters required to be fully insured	
Number of quarters the wage earner has	
Number of quarters toward currently insured status	

REMARKS

EXHIBIT 6 (3 pages)

DISALLOWANCE NOTICE NO. (SHOW NECESSARY FILL-INS)	PARAGRAPHS IN ORDER OF APPEARANCE ON NOTICE (SHOW NECESSARY FILL-INS)
D OH-DL 829	-5

ADDITIONAL INSTRUCTIONS Sec. 407 amended by the Social Security Act provides in section 7 of the Act, regarding adoption of a child by a person who [illegible] that a child who is adopted by a person who [illegible] the adoption was subsequent to the death of the wage earner, no benefits are payable on the basis of the wage [illegible]

DETERMINATION BY	DATE	APPROVED BY	DATE
[signature]	02/28/69	[signature]	2/28/69
X CLAIMS REPRESENTATIVE ___ CLAIMS AUTHORIZER ___ FIELD REPRESENTATIVE ___ OTHER (specify)		TITLE CLAIMS AUTHORIZER	

FORM SSA-201 [illegible]

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of	Claim for
Marion P. Morris o/b/o Linda Gail Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the undersigned Hearing Examiner upon a request for hearing filed July 16, 1968, by Marion P. Morris, the claimant and wage earner (on behalf of his adopted child, Linda Gail Morris), who is dissatisfied with prior determinations of the Social Security Administration whereby applications for child's insurance benefits under the Social Security Act were denied. Marion P. Morris is a disabled wage earner, who has been receiving Social Security disability insurance benefits since July, 1957 (having had a period of disability established prior to 1957). The claimant filed an application on behalf of Linda Gail Morris for child's insurance benefits on October 22, 1966. Such application was denied on November 14, 1966, whereby reconsideration was thereafter sought. However, pursuant to such reconsideration, the aforesaid denial was affirmed and the claimant so notified by letter dated May 10, 1967. No timely further appeal was taken from such denial.

Claimant, on behalf of Linda Gail Morris, again filed an application for child's insurance benefits on February 28, 1968 (presumably because of certain legislation enacted in 1968, modifying the child's insurance benefit provisions of the Social Security Act). However, such application was denied March 15, 1968, on the basis that adoption of the child, Linda Gail Morris, was not supervised by a public or private child placement agency, under the construction then placed upon newly-enacted Section 202(d)(8)(E).

Such latter subparagraph (E) was enacted in January, 1968, as a part of the so-called "Social Security Amendments of 1967." This paragraph, and other appropriate sections of the Social Security Act, will be discussed hereinafter. After the initial denial of claimant's second application, reconsideration was requested; after reconsideration, the aforesaid denial was affirmed on grounds similar to the foregoing, except that reference was made (Exhibit 8, p. 3) to a supposed requirement that the adoption needed to have been supervised by the West Virginia Department of Public Welfare (there is no such requirement in the Act), and the claimant was so notified by letter dated June 28, 1968. (There was an untimely request for hearing filed prior to the aforesaid reconsideration determination, which necessarily resulted in its denial by a Hearing Examiner, who issued a dismissal order dated April 24, 1968; administrative remedies should, of course, be exhausted prior to the entertainment of a hearing request.)

Pursuant to claimant's timely request for hearing (filed July 16, 1968, as aforesaid), the undersigned Hearing Examiner assumed jurisdiction over this matter. In view of the posture of the present case, it is the opinion of the undersigned Hearing Examiner, however, that an oral hearing is not necessary herein; certain legal issues are presented which, if resolved in a manner favorable to the claimant, provide an adequate basis for entitlement to child's insurance benefits. Other than official notice of certain well-established facts pertaining to juvenile courts (which, presumably, would come within the generic definition of "public child placement agency" pursuant to Section 202(d)(8)(E)—particularly the functions of juvenile courts in West Virginia under appropriate statutes), further evidence, in the nature of testimonial evidence, is deemed unnecessary in this case, in view of the findings and conclusions hereinafter made. The Hearing Examiner incorporates, as a part of the record for decision herein, documents marked as Exhibits 1 through 12.

The controlling provisions of the Social Security Act, as amended by the 1965 (and 1967) Social Security Amendments, are Section 202(d)(1)—particularly subparagraph (C), clause (i) thereof; Section 202(d)(3); and Section

202(d)(8)—particularly subparagraph (E) of such latter provision.

Section 202(d)(1) of the Social Security Act, as amended, 42 U.S.C. 402(d)(1), reads as follows:

> "202(d)(1) Every child (as defined in section 216 (e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—
>
> (A) has filed application for child's insurance benefits,
> (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d) which began before he attained the age of eighteen, and
> (C) was dependent upon such individual—
>
> (i) if such individual is living, at the time such application was filed,
> (ii) if such individual has died, at the time of such death, or
> (iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—
>
> (D) the month in which such child dies, marries, or is adopted (except for adoption by a stepparent, grandparent, aunt, uncle, brother, or sister subsequent to the death of such fully or currently insured individual),
> (E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii)

is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month.

* * *

It would clearly appear in this case, from facts to be noted hereinafter, that the child, Linda Gail Morris, was dependent upon the wage earner, referred to as "such individual" in paragraph (C) at the appropriate time specified in clause (i) thereunder. There is no doubt that the wage earner is a living individual, and was such "at the time such application [the child insurance benefit application] was filed," within the meaning of Section 202(d)(1)(C)(i). This alone should be enough to entitle the child to child's insurance benefits even as sought by the prior application, irrespective of the somewhat more restrictive requirements of clause (iii) of subparagraph (C) which purport to require dependency on a living disabled wage

earner as of certain restricted periods of time in order for benefit entitlement to be warranted under such provision; however, it should be especially noted that the disjunctive "or" appears just before clause (iii), which would thus warrant the application of any of the previous clauses if such previous clause fits the facts of the case. It can hardly be gainsaid that clause (i) fits the facts of the instant case because, although the wage earner is disabled, he is definitely a "living" wage earner within the clear literal meaning of clause (i).

If the above were not sufficient for entitlement in the instant case, Section 202(d)(3) certainly would be sufficient to provide entitlement. Section 202(d)(3) reads as follows:

> "202(d)(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—
>
> (A) such child is neither the legitimate nor adopted child of such individual, or
>
> (B) such child has been adopted by some other individual. For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual."

As will be seen hereinafter, the claimant's case comports squarely with the "deemed dependency" provision of 202(d)(3).

Apparently, what has been used by the prior determination components of the Social Security Administration as a basis for the previous denials herein (in connection with both the first and second applications) were the provisions of aforesaid Section 202(d)(1)(C)(iii), and Section 202(d)(8)(E).

Section 202(d)(8) of the Social Security Act, as amended by the 1967 Amendments, reads as follows:

> "202(d)(8) In the case of—
>
> (A) an individual entitled to disability insurance benefits, or
>
> (B) an individual entitled to old-age insurance

benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual which still exists at the time of such adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or

(ii) such adopted child was living with such individual in such month; or

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child-placement agency,

(ii) in an adoption decreed by a court of competent jurisdiction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

(iv) at a time prior to the attainment of age 18 by such child.

* * *"

It will be seen, as discussed hereinafter, that claimant's adoption of the child, Linda Gail Morris, was carried out under the auspices of, and pursuant to the direction and control of, the Juvenile Court for Raleigh County, West Virginia, which public institution would seem to be within a generic definition of "public child-placement agency," within the meaning of subparagraph (E) of the aforesaid Section 202(d)(8); a juvenile court, in general, as well as in West Virginia, is definitely in the child "placement" business (in fact, "placement"—such as in foster homes, with potential adoptive parents, etc.—is one of the main functions of a typical juvenile court), such court being clearly a public entity, beyond any doubt.

The undisputed facts in the case, from a careful review of the entire documentary evidence of record (Exhibits 1 through 12), show that the child, Linda G. Morris, was born March 7, 1965, and that she has been continuously in the uninterrupted custody of the claimant-wage earner since November 29, 1965 (Exhibit 1, page 2, indicating that such child lived with the wage earner actually from October 1965), and was adopted by the claimant-wage earner and his wife, by adoption decree entered October 13, 1966 (Exhibit 12, a certified copy of the adoption decree entered by the Juvenile Court of Raleigh County, West Virginia); that applications for child's insurance benefits were filed, on behalf of Linda G. Morris, on October 22, 1966, and February 28, 1968 (Exhibits 1 and 5), it being clear that the child was under age 18 at both of such times, and was in the custody of the wage earner at the time such applications were filed (Exhibit 12); that the child has been supported by the claimant-wage earner since her birth, March 7, 1965 (see Exhibit 3); that the child is still under age 18 (presently being only 3 years of age) and is, of course, unmarried, within the requirements of Section 202(d)(1)(B), noted hereinbefore; that the child, Linda G. Morris, meets the definition of "child" contained in Section 216(e) of the Social Security Act, because she is the legally adopted child of the claimant-wage earner who is the natural grandfather of the child, Linda G. Morris (Exhibit 12; Exhibit 1); and, further, that the claimant-wage earner, Marion P. Morris, is a living disability insurance benefit recipient pursuant to the Social Security Act, having received such

benefits for the month of July, 1957, and thereafter (Exhibit 8, page 2).

It is consequently seen that the entitlement provisions of Section 202(d)(1) are clearly met in this case, in that Linda G. Morris is the child of the individual wage earner, Marion P. Morris, (i.e. within the definition of "child" in Section 216(e), the fact of the child's adoption comporting with such definition), such wage earner being entitled to disability insurance benefits; that a valid child's insurance benefit application was filed, and that the other requirements of Section 202(d)(1) are met, including the dependency, at the time both applications were filed, of such child upon the claimant-wage earner (i.e., the child was dependent upon Marion P. Morris within the meaning of 202(d)(1)(C)(i), as aforesaid). The child and the claimant-wage earner having met all the requirements of the aforesaid provision, accordingly, should have been entitled to child's insurance benefits by virtue of the first application, noted hereinbefore, and even more particularly because the "deemed dependency" requirements of Section 202(d)(3) were also met at such time, in view of the fact that the child was living with the wage earner, her adoptive father, at the time such child's application was filed within the clear meaning and intent of the "deemed dependency" provision of Section 202(d)(3). (Moreover the child has been *actually* dependent upon such wage-earner, so that such "deemed dependency" provision may not be needed at all for entitlement.) These two provisions alone, i.e., paragraphs (1) subparagraph (C) clause (i), and paragraph (3), of Section 202(d), both being clearly met, should easily constitute sufficient bases for entitlement to Social Security benefits for the child, Linda G. Morris, on the basis of the wage record of her claimant adoptive father, Marion P. Morris.

Apparently, the Social Security Administration components responsible for the prior denial determinations in connection with the first application construed the provision of Section 202(d)(1)(c)(iii) as exclusively controlling, thereby precluding entitlement to benefits; those components responsible for making the denial determinations on the second application (filed after the new amendments were enacted in early 1968) additionally construed the pro-

visions of what is embodied in present Section 202(d)(8)(E) as also defeating entitlement in this case.

As seen, the provisions discussed hereinbefore may well have provided an adequate basis for entitlement in this case earlier. Section 202(d)(8), for want of a better term, is a "deemed not dependent" provision which, in view of liberal construction generally required of the Social Security Act, is somewhat anomalous (many court precedents require that conflicting provisions should be construed, where possible, so as to afford entitlement); it, therefore, appears that it is not appropriately used in a case where, as here, two other provisions which clearly appear to have been met will afford entitlement (viz., Sections 202(d)(1)(C)(i) and 202(d)(3)). The court cases are too numerous to require citation of the tenet that there should be a liberal construction of the Social Security Act, and where particular provisions conflict, a construction favoring coverage (rather than defeating entitlement) should prevail.

Even if the above provisions (Section 202(d)(1)(C)(i) and 202(d)(3)), which are literally met by the facts of the instant case, were not in fact controlling, it would appear that newly-enacted clause (i), subparagraph (E), paragraph (8) of Section 202(d), provided by the Social Security Amendments of 1967 (signed into law in January 1968) would—in and of itself—afford sufficient basis for entitlement in this case. Such provision, set out hereinbefore, provides that an adopted child of a wage earner whose adoption occurred after the wage earner's entitlement to disability insurance benefits, shall be deemed "not to meet" the requirements of clause (i) or (iii) of paragraph (1)(C) of Section 202(d) *unless* such child: "* * * (E) was legally adopted by such individual [such as the claimant-wage earner herein]—(i) in an adoption which took place under the supervision of a public or private child placement agency * * *" (emphasis supplied). It clearly appears that the functions of the court of competent adoption jurisdiction in this case (i.e., the Juvenile Court) are in fact literally within the ambit of the definition of the term "public * * * child placement agency." Other provisions of subparagraph (E) of the foregoing provisions, i.e., requiring residency within the United States for not less than one year, etc., appear to have been met in this

case, in view of the evidence of record and the antecedent evaluation thereof.

That a juvenile court, as such courts are constituted generally throughout the United States, and particularly in West Virginia, may appropriately be viewed as coming within the definition of "public child-placement agency" can hardly be gainsaid. It is definitely a public agency, one of the principal functions of which is the "placement" of children in various appropriate environmental settings, including temporary and permanent custody, in foster homes, etc.

In respect to the jurisdiction of juvenile courts in West Virginia—as is the case of most other states—such court takes full supervisory authority over the child, often placing him in a foster home (the adults therein sometimes being prospective adoptive parents); under the immediate supervision and/or custody of a suitable individual; or in some other environmental setting deemed to be in the best interests of the child. In a truly literal sense then, the court, a public entity, is extensively involved in *child placement*, proper environmental placement being one of the prime functions of such a court in our modern society under the doctrine of *parens patriae* (i.e., the State acting in place of the parents). It is noteworthy that the *1966 Official Code of West Virginia*, Chapter 49, Article 5, Section 4, provides that "A person under the age of 18 years who appears before the juvenile court *in any capacity* shall be deemed to be a ward of the court and, protected accordingly * * *" (emphasis added).

It is believed to be a reasonable conclusion that the use by the Juvenile Court, in the present case, of the town official for investigative and supervision purposes (in addition to the Court's own supervision) is not inconsistent with the aforesaid meaning of the phrase "public child-placement agency" (per Section 202(d)(8)(E)).

Juvenile courts in general have a direct jurisdictional responsibility and supervision, just as is the case of such courts in the State of West Virginia, of dependent, neglected, or delinquent children (the juvenile court has jurisdiction of children up to the age of 18 in West Virginia). Although subparagraph (E), newly enacted by the 1967 Amendments, would appear to refer to the more orthodox type of "public child placement agency," never-

theless, the juvenile court—particularly where it determines custody (as was determined in its order in this case) —is certainly a form of public entity extensively involved in the placement of numerous children; hence, is in the "placement" business, and is clearly an agency of the public. It is consequently believed, therefore, that a liberal and reasonable interpretation of the Act would certainly result in the conclusion that a juvenile court (having one of the most comprehensive types of jurisdiction over the youthful individual, compared with other types of courts in this country), is substantially within the ambit of a generic definition of "public child placement agency." The fact that the second requirement of subparagraph (E) may be somewhat repetitive, where the foregoing is held to be the case, is of no moment here.

Although the claimant (in Exhibit 5, page 4) stated that his adoption of the child "was not supervised by a public or private child placement agency," this assertion on his part is not controlling, in view of the foregoing; the determination in such regard is in the nature of a legal conclusion which is properly within the province of the Hearing Examiner herein (moreover, it would appear that Exhibit 5, claimant's second application, was not in fact filled in by him in view of the handwriting differences contained therein, claimant's signature evincing a rather "nervous scrawl" compared to the factual information contained in the body of such exhibit).

In view of the fact of claimant's case being within the purview of Section 202(d)(1)(C)(i) and 202(d)(3) of the Act, even in respect to the earlier application, and in view of the total evidence of record—including that more recently adduced—the determinations in connection with claimant's first application are hereby reopened by the undersigned Hearing Examiner. 20 C.F.R. 404, 908, 916, 957, 958.

There possibly could have been a valid equitable adoption existing in the instant case (within the meaning of the doctrine announced by the U. S. District Court for the Southern District of West Virginia in its decision, issued in 1965, of *Davis* v. *Celebrezze*, 239 F. Supp. 608; however, in view of the fact that the Hearing Examiner finds that entitlement herein is clearly warranted under the provisions of Section 202(d)(1)(C)(i); 202(d)(3); and 202(d)

(8)(E), hereinbefore noted, no testimonial-type hearing appears necessary in this case, in respect to such factor).

Based upon a careful evaluation of all evidence of record, including the functions of the juvenile court, herein officially noticed, it is the finding of the undersigned Hearing Examiner that the instant case clearly meets the entitlement requirements of Section 202(d)(1)(c)(i) and 202(d)(3) of the Social Security Act, as amended, and it is found that the provisions of Section 202(d)(8) do not operate to defeat entitlement in this case or to warrant a conclusion that the child is deemed not to be dependent upon the adoptive father, the claimant-wage earner herein. It is found that all necessary factors of entitlement, pursuant to the specifically-cited provisions of the Social Security Act, including those provided in the Social Security Amendments of 1967, are met in this case.

It is, consequently, the decision of the undersigned Hearing Examiner that the claimant wage-earner, Marion P. Morris, on behalf of the child, Linda Gail Morris, pursuant to the aforesaid applications for child's insurance benefits filed on October 22, 1966 and February 28, 1968, is entitled to child's insurance benefits in accordance with the provisions of Section 202(d) of the Social Security Act, as amended.

/s/ Paul R. Stone
PAUL R. STONE, *Hearing Examiner*
1019 Federal Building
500 Quarrier Street
Charleston, West Virginia 25301

Date: Sept. 20, 1968

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL

Remanding Case of Hearing Examiner for Additional Action

In the case of	Claim for
Marion P. Morris o/b/o Linda G. Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the Appeals Council on its own motion to review the hearing examiner's decision issued on September 20, 1968.

On consideration of this case, it appears to the Appeals Council that the hearing examiner's findings on relevant facts concerning the dependency of the minor claimant upon the wage earner are not adequately supported by the record. It further appears that the hearing examiner's decision was issued without holding a hearing.

Accordingly, the Appeals Council hereby remands the case for necessary action by a hearing examiner. The hearing examiner will schedule a hearing and give reasonable notice to the claimant of the time and place thereof, the issues to be determined, and the questions of fact upon which findings will be made. He will provide ample opportunity for the claimant to examine the evidence to be received into the record, and to propose findings of fact and conclusions of law, as well as reasons in support thereof. Upon completion of the hearing record, the hearing examiner will issue a revised decision, with notice to the claimant of the right to request review thereof by the Appeals Council.

APPEALS COUNCIL

/s/ Irving Trager
IRVING TRAGER, *Member*
Lucille V. Covey
LUCILLE V. COVEY, *Member*

Date: Jan. 3, 1969

CRIMINAL COURT OF RALEIGH COUNTY

BECKLEY, WEST VIRGINIA

Harry L. McCreery
Judge

January 30, 1969

P. W. Hendricks, Attorney-at-Law,
227 State Street,
Madison, West Virginia

Dear Mr. Hendricks:

I have your letter with reference to information regarding the adoption of one, Linda Gail Morris.

Adoption Order Book 9 at page 69, dated October 13, 1966, shows that the Court requested Joe Asbury, Town Policeman for the town of Whitesville, to make investigation in this case, and he did so, reporting favorably. So far as the order shows an investigation was not made by the Child Welfare Department.

I hope this supplies the information that you want.

With kindest regards, I am

Very truly yours,

/s/ Harry L. McCreery,
HARRY L. MCCREERY,
Judge Criminal Court.

EXCERPTS FROM TRANSCRIPT, HEARING BEFORE PAUL R. STONE, HEARING EXAMINER, FEBRUARY 6, 1969, pp. 7-13; 18-21; 25-26

• • • • •

[7] HEARING EXAMINER: I will take notice of the fact that the so called criminal court of Raleigh County is also the juvenile court and it is entirely different from the circuit court of Raleigh County, even though they both have concurrent jurisdiction of adoption proceedings. Do you have any additional documents other than the certification by the authorities in Raleigh County as to the lack of a child placement agency there to be introduced at this time Mr. Hendricks?

MR. HENDRICKS: No, I just have this to say—that in some of the larger counties like Cabell and like Kanawha, they have created further courts which deal with nothing but what we call divorces and adoptions. It is called the Domestic Relations Court here in Kanawha County, and they have the facilities with which to make investigations and they have a department of welfare to make an investigation and then they have their own investigators but in a rural county like Raleigh and Boone and many others, they don't have these facilities, they are not available, this man couldn't have come to Kanawha County and adopted this child because the statute clearly says it must be in the county where he resides, and for this reason he is following the statute that the legislature set up and they had this in mind when they changed the law to permit a competent and discrete person to make this report to the [8] court. There must be a report made in every adoption case and this case had its Chief of Police, a man that I'm sure the court knew to be a good man and I know personally he made the investigation, and making his report to the court, and that is the only way they can do it in those counties. In other words, he employed counsel, he did everything that a person can do in this state to make this a valid adoption. It wasn't anything else that he could do, nothing else that any lawyer could do because they complied with the statute.

HEARING EXAMINER: Do you want to consider that as a part of your oral argument, at least a sort of a preliminary oral argument in this case.

MR. HENDRICKS: Yes sir. The statement I made was to ask the Examiner to take judicial notice of these facts because they are so well known to especially members of the Bar.

HEARING EXAMINER: Do you want to amplify that particular contention towards the close of the hearing? Of course, you have the privilege of doing so Mr. Hendricks.

MR. HENDRICKS: All right.

HEARING EXAMINER: At this point I want to briefly review the history of this claim up to the present time and to summarize the basic issues for decision in the case. The record shows that on October 22, 1966, the claimant Marion P. Morris filed with the Social Security Administration, an application for childs insurance benefits on behalf of his adopted daughter, Linda Gail [9] Morris, based on the claimant's wage record as a disabled wage earner who has been receiving disability benefits under the Social Security Act since July 1957. Such application for childs insurance benefits was denied on November 14, 1966. On April 5, 1967, the claimant requested reconsideration. However, pursuant to such reconsideration the aforesaid denial was affirmed, and the claimant was so notified by letter dated May 10, 1967. No further action was taken on such application. The record additionally shows that on February 28, 1968, the claimant filed another application with the Social Security Administration for childs insurance benefits on behalf of Linda Gail Morris. Such application was denied March 15, 1968, on the basis that adoption of the child was not supervised by a public or private child placement agency as required by Section 202(d)(8)(e) of the Social Security Act. The claimant thereupon requested reconsideration of such determination pursuant to such reconsideration, however, the aforesaid denial was affirmed and the claimant was so notified by letter dated June 28, 1968. Being dissatisfied with this determination on July 16, 1968, the claimant requested a hearing before a Hearing Examiner of the Social Security Administration. As noted heretofore, a formal hearing was not held at such time the Hearing Examiner issuing a favorable decision on the record under date of September 20, 1968, and in that the claimant was entitled to childs insurance benefits on behalf of [10] of Linda Gail Morris. However, by order dated January 3, 1969, this case was remanded by the Appeals

Council in order that a hearing might be held, any additional available evidence received, and it further directed the Hearing Examiner to issue a revised decision. In accordance with the Appeals Council remand order of January 3, 1969, this hearing is now being held before me here in Charleston, West Virginia, on February 6, 1969. Now Mr. Hendricks and Mr. Morris, is what I have said regarding the history of this claim correct?

MR. HENDRICKS: Yes sir.

HEARING EXAMINER: To the best of your knowledge Mr. Morris is that correct?

CLAIMANT: Yes.

HEARING EXAMINER: Mr. Hendricks, the important question to be decided in this case is whether or not the claimant is entitled to childs insurance benefits on behalf of the child Linda Gail Morris, under the provisions of the Social Security Act, as amended. It must be specifically determined whether the child meets the dependency requirement for entitlement to such benefits under Section 202(d) of the Social Security Act, as amended. Mr. Hendricks do you understand the issues for decision in this case sir?

MR. HENDRICKS: Yes, I think so.

HEARING EXAMINER: Mr. Morris would you please rise and raise your right hand and be sworn as a witness?

[11] The claimant, MARION P. MORRIS, having been first duly sworn, testified as follows:

EXAMINATION OF CLAIMANT BY HEARING EXAMINER:

Q. State your full name and address for the record please sir?

A. Whitesville, Marion P. Morris, Box 357, Whitesville, West Virginia.

Q. Are you the same Marion P. Morris who is the claimant and wage earner in these prior proceedings that I have just been describing?

A. Yes sir.

Q. I believe you have been receiving social security disability benefits beginning as of the month of July 1957 and thereafter?

A. Yes sir.

Q. I believe that you were found to be under a disability beginning September 30, 1953, is that correct sir?

A. That's right.

Q. And you have a period of disability since then?

A. Yes sir.

Q. Now what relation is this child Linda Gail Morris to you?

A. Granddaughter.

Q. She is your natural granddaughter?

A. Natural granddaughter.

Q. Now the record indicates that you have legally adopted this child?

[12] A. Yes sir.

Q. I believe that adoption occurred October 13, 1966, is that correct?

A. I believe that's right, I'm not for sure.

Q. Was the child living with you at the time of adoption?

A. Yes sir.

Q. How long had she been living with you prior to the adoption?

A. Prior to the adoption she had been living with me all of her life except about two months.

Q. When was she born sir?

A. March 7, let's see, she'll be four I believe—I'm not certain, she'll be three or four this coming March 7th. I believe it's four. I guess you've got the record there.

Q. The record indicates that she was born March 7, 1965, is that correct?

A. That's right then.

Q. And she has lived with you all except what—two months of her life?

A. About the first two months of her life. Do you want to know why?

Q. No, that's not necessary.

MR. HENDRICKS: I would like for him to tell why, if you don't mind, if there is any reason why.

[13] Q. Before you answer that let me ask you one additional question. Mr. Morris have you supported this child this whole time, ever since birth with the exception of two months?

A. Yes sir.

Q. She had been dependent on you?

A. Yes sir.

Q. All but the first two months of her life?

A. Yes sir.

Q. And she continues to live with you at the present time?

A. She has.

Q. And at the time of the first application for childs insurance benefits filed October 22, 1966, was she living with you and depending upon you at that time?

A. Yes sir.

Q. And at the time of filing the last application February 28, 1968, was she also dependent on you?

A. Yes sir.

Q. And living in your household?

A. Yes sir, she has been living with me all her life, always.

Q. And you have supported her all of her life except the first two months?

A. Yes sir.

Q. You can proceed to ask questions Mr. Hendricks.

* * * * *

[18] somebody from Boone County do this, it's forty miles from Beckley to Whitesville and he lives right on the edge of Whitesville, so this would be the reason because it is a state agency and that would be the reason why. As a matter of fact——.

Q. Are you saying now Mr. Morris and Mr. Hendricks that some other agency assisted the supervision of these adoption preliminaries?

MR. HENDRICKS: Yes.

Q. Rather than—other than this police officer of Raleigh County?

MR. HENDRICKS: Yes, he's not a police officer, he's a Chief of Police of Whitesville.

A. He was, he isn't now, but let me make this plain, it might help somewhere. He's been Deputy Sheriff for twenty one years to the best of my knowledge and in all cases Judge McCreary used him down there in Clear Fork District as his investigator on things like that. He has made investigations for——.

Q. Are you talking about Joe Asbury?

A. Yes sir.

Q. Well at this juncture I particularly want to know about this other individual from Boone County, as your attorney intimated a representative of the State Depart-

ment of Public Assistance or State Welfare Department as the case may be. What was the name of this other individual who assisted in this preliminary investigation?

[19] A. Skeens, Lester Skeens.

Q. And what agency is he connected with?

A. Welfare and he looked after the children—the child welfare part of it.

Q. In other words he is a representative of the Boone County Child Welfare Department, is that correct?

A. I reckon that's what they call him.

Q. Now you have positive knowledge that he assisted Joe Asbury?

A. I have positive knowledge that he came there and made an investigation.

Q. Even though Joe Asbury signed it? This other individual, Mr. Skeens, actually assisted in supervising the preliminary work in this case?

A. Well they both came there for the same reason. As to whether they ever got together on it or not I don't know. I'm not in a position to answer because I never did talk to Skeens after that.

Q. And you say this is the practice that where you live, where this town—Joe Asbury lived close to the line, that he had assistance from some representative such as Mr. Skeens from the Welfare Department of Boone County?

A. Mr. Skeens came there and asked questions, concerning this adoption before the adoption was made. I suppose that they were together on it, I do not know what they done between themselves.

[20] Q. Well this adoption was actually under the supervisional auspices of more than just a police officer and Raleigh County?

A. Right.

Q. These questions that were asked by Mr. Skeens—was all that prior to October 13, 1966, the time of the adoption decree was this prior to your receiving the adoption decree?

A. Yes.

Q. Who did the bulk of the investigational questioning, was it Mr. Skeens or Mr. Joe Asbury?

A. Well now it would be hard for me to make a positive statement on that as to which one asked the most questions, or what, but they both did come there and make an investigation concerning.

Q. Mr. Hendricks, you indicated prior to the commencement of the hearing that you wanted to get an additional exhibit, as I gather, to show that there is no child placement agency in Raleigh County and I presume you are going to get that from Judge McCreary you said?

A. Yes.

MR. HENDRICKS: Yes.

Q. Well in addition to that, in view of the testimony here, I would like for you if you can to procure a notarized statement from this individual Mr. Skeens—who has been testified is a representative of the Boone County Welfare Department giving his official position and the extent to which if any, he participated in [21] or supervised any of the preliminary steps necessary prior to the issuance of this adoption decree. The record is scant in connection with such point, and I would like for it to be developed as fully as possible so that an intelligent decision can be made in this case.

Q. We will take a short recess. Back on the record. Mr. Morris there is a statement here, in exhibit 5, in connection with the application for childs insurance benefits, on the last page of that application, a statement to the effect that "the adoption was not supervised by a public or private child placement agency," and you signed this statement. Was that the case, I mean is that your opinion, that this adoption was not supervised or what is the situation about that?

A. I was thinking I guess—I don't remember specifically —but——.

Q. Sir?

A. I don't remember.

Q. Well I want to be a little more specific about this application form here, exhibit 5. Your signature here looks like it is written in a nervous scrawl to me, did somebody else fill out the body of the application for you and you merely signed it?

A. Can I see the signature?

Q. Yes sir. I probably ought to ask you is that your signature there—(indicating)?

A. Yes.

* * * * *

[25] what she said, I suppose that he would have a record of all that.

Q. And he stayed on there continuing to question your wife after you left?

A. Yes, he stayed there quite a while after I left.

Q. And what agency did you say he was connected with?

A. The Public Welfare, Child Welfare of the DPA, isn't that right?

Q. Of what county?

A. Boone.

Q. Boone County.

A. First, I don't guess this could go on record, but first——.

Q. Well if you want to have a conference with your attorney as to whether it should or should not go on the record, you are at liberty to do so. Mrs. Means is taking down everything.

MR. HENDRICKS: Go ahead.

A. Well at first Don asked me, said "where do you want this done at, in Raleigh or Boone?" I said "well I think Raleigh, because I live in Raleigh." He said "I was fixing to have it in Boone County," and I said "no," I said "Raleigh County" because I live just over the county line.

MR. HENDRICKS: You live about 100 yards from the county line?

A. Less than that—about 200 and some feet, because it was measured for us.

[26] Q. So your understanding was that the law as Mr. Hendricks has given us, referenced to here today, the fact that you had to get this adoption cleared up in Raleigh County?

A. That's right. That was right, that was why I told Don——.

Q. As far as you know this Mr. Lester Skeens, of the Welfare Department is more or less assisting in carrying this out because of the fact that you live so near Boone County, is that right?

A. Yes, that's the way I take it.

Q. Well as I indicated Mr. Hendricks, I would like to have a notorized statement from Mr. Lester Skeens as to the extent of his participation in this matter and in what official capacity he acted, if any, and I would like

for that to be in affidavit form, and if there are any other officials over there in Boone County or Raleigh County that have any personal knowledge of this matter, you are at liberty to get affidavits from them too. If you meet with any resistance in attempting to secure these affidavits, I would appreciate it if you would let me know and I will try to be of some aid in securing these if, in fact, there are individuals there that have personal knowledge of this matter.

MR. HENDRICKS: All right.

Q. Do you want to ask the claimant any additional qestions?

MR. HENDRICKS: No sir, I believe you have covered it real good.

Q. Now do you want to make any additional oral argument at this time or do you want—would you like to file a written brief on any

* * * * *

CRIMINAL COURT OF RALEIGH COUNTY
BECKLEY, WEST VIRGINIA

Harry L. McCreery
Judge

February 7, 1969.

P. W. Hendricks, Attorney-at-Law,
227 State Street,
Madison, West Virginia.

Dear Mr. Hendricks:

I have your letter requesting information as to whether or not Raleigh County has a public or private placement center or agency for children.

Raleigh County does not have a public or private placement center or agency for children.

Very truly yours,

/s/ Harry L. McCreery
HARRY L. MCCREERY,
Judge Criminal and Juvenile Courts.

WEST VIRGINIA
DEPARTMENT OF WELFARE

District Office No. 7

325 State Street
Madison, West Virginia 25130
March 3, 1969

Mr. P. W. Hendricks, Attorney at Law
State Street
Madison, West Virginia 25130

Re: Mr. and Mrs. Marion P. Morris
Granddaughter—Gail Kinder

Dear Mr. Hendricks:

In response to your request for a statement concerning the above-named persons, I offer the following:

I visited in the home of Mr. and Mrs. Morris on August 25, 1967, for the purpose of preparing a divorce and custody investigation for the Court of Common Pleas of the County of Cuyanoga, Cleveland, Ohio.

I found the home to be very suitable for the above-named child, and my observation was that the child was physically and emotionally healthy. I recommended that the grandparents be given full custody of Gail. I would also recommend that this home be approved as an adoptive home for Gail.

Yours truly,

/s/ Leslie M. Skeens
LESLIE M. SKEENS
Social Worker II
Boone County

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of	Claim for
Marion P. Morris o/b/o Linda Gail Morris (*Claimant*) Marion P. Morris (*Wage Earner*)	Child Insurance Benefits 232-18-6710 (*Social Security Account Number*)

This case is before the undersigned Hearing Examiner upon a remand thereof by the Appeals Council, Social Security Administration, dated January 3, 1969, for the purpose of holding a hearing and issuing a revised decision. The Hearing Examiner had previously issued a favorable decision in this case, without deeming it necessary to hold a hearing.

The principal issues are as stated in the Hearing Examiner's decision of September 20, 1968, which is hereby referred to, the provisions of which are hereby incorporated by reference (except to the extent inconsistent herewith).

Hearing was duly held on February 6, 1969, by the undersigned in Charleston, West Virginia. The claimant was personally present at the hearing and gave oral testimony in his own behalf. Mr. P. W. Hendricks, an attorney at law of Madison, West Virginia, appeared at the hearing and represents the claimant.

As suggested by the Appeals Council, there may well have been error in determining entitlement on the basis of claimant's first application for child's insurance benefits; in view of the fact that present policy is to the effect that administrative res judicata obtains where there is no new and material evidence presented within four years of the initial determination on a particular issue (and the provisions providing for an apparently less-stringent standard in child's adoption cases where the adoption is under the auspices of a public or private child placement agency not having been enacted until the 1967 Social Se-

curity Amendments were signed into law in January, 1968), the Hearing Examiner's prior reopening of claimant's first application (of October 22, 1966) and the determinations thereupon, is hereby set aside. The prior decision of September 20, 1968, is accordingly revised in consonance herewith, to show non-entitlement on the basis of claimant's first application. 20 C.F.R. 404.957, 958.

At the hearing, claimant testified that the child, Linda Gail Morris, born March 7, 1965, was supported and cared for by him continuously from the period shortly after such child's birth. Claimant received monthly Social Security disability benefits for the period beginning with the month of July, 1957. The child, Linda, was adopted by claimant and his wife (who are the natural grandparents of the child) on October 13, 1966. As previously found by the Hearing Examiner, Linda was being supported by the claimant at the time such child's application was filed, living with such claimant (the wage earner) at such time, and thus comported with the requirement of Sections 202 (d)(1)(C)(i) and 202(d)(3) of the Social Security Act.

Section 202(d)(8)(E) also provides, in effect, that if an adoption takes place under the supervision of a public or private child placement agency, certain other provisions of the Act which may augur against entitlement would not preclude entitlement. It was additionally found by the Hearing Examiner that the Juvenile Court of Raleigh County, West Virginia (the court which decreed the adoption in the instant case) partakes of the character of a "public child placement agency" and, therefore, sufficiently constitutes such an agency or entity (from a generic and hence, literal, standpoint), for such purpose.

The foregoing facts were obvious from the documentary evidence of record without a hearing; however, at the hearing, claimant intimated that an official of a neighboring county may have aided in the investigation work preliminary to the Raleigh County Juvenile Court's issuance of the adoption decree (this was checked out, and found not to have been the case—see Exhibit 17).

Pertinent provisions of the Social Security Act in this case are Sections 216(e); 202(d)(1)(C)(i); 202(d)(3); 202(d)(1)(C)(iii); and 202(d)(8). As noted in the prior decision, the Hearing Examiner found that claimant's case

comported with the requirements of Sections 202(d)(1)(C)(i), 202(d)(3), and 202(d)(8)(E) of the Act, sufficient for entitlement purposes, irrespective of the seemingly countervailing nature of Section 202(d)(1)(C)(iii), on the principal basis that a liberal (or even literal) construction of the Act (in favor of coverage, rather than against it) clearly augurs in favor of such result.

In respect to claimant's second application, moreover, additional evidence was presented, and contentions made, which further strengthened the prior quasi-adjudicative disposition by the Hearing Examiner on such matter. It appears, from additional evidence presented at and after the hearing, that there is no public or private child placement agency in Raleigh County, West Virginia (the county in which any adoption action must necessarily be brought). See Exhibits 13 through 18. Hence, the attorney, Mr. Hendricks, makes the point that it would be unlawfully discriminatory (even a violation of the Federal constitutional equal protection of the laws concept, he urges) for benefits to be payable for children in particular counties of the United States where the orthodox type of child placement agency, either public or private, is in existence as an available adjunct to an adoption court, on the one hand, and for children to be deprived of such Federal benefits simply because there is not such an agency available in the only place in which a petition for adoption can properly be brought, on the other. At the very least, this point not only tends to further buttress the prior holding as to the juvenile court being a child placement agency (which type of court decreed the adoption in the instant case) as legally proper (such a court is within a generic definition of the term "public child placement agency," its functions being mostly *placement* in nature, whether the subject be a juvenile delinquent, or a neglected or dependent child), but is an absolute necessity in the instant case if invidious discrimination is to be avoided in attempting to apply the 1968 Federal enactment in as uniform and fair way as possible. The Hearing Examiner's own independent research indicates that, although the concept of equal protection is generally thought to be a prohibition on state action, the equivalent thereof is available as a proscription against discriminatory treatment at the Federal level. See *Bolling* v. *Sharpe*, 347 U. S. 497 (1954).

In accordance with the reasoning contained in the Hearing Examiner's prior decision of September 20, 1968, as further augmented by the fact that discriminatory treatment against the child and the claimant wage earner is urged as a consequence if such were not again followed, it is the decision of the undersigned Hearing Examiner—based on findings heretofore made in the prior decision, as well as upon more recent considerations, that the claimant, Marion P. Morris (on behalf of the child, Linda Gail Morris), pursuant to application filed February 28, 1968, is entitled to child's insurance benefits under Section 202 (d), and in consonance with Section 216(e), of the Social Security Act, as amended. It is the further decision of the Hearing Examiner that the prior decision of September 20, 1968, is hereby revised in accordance with the foregoing.

/s/ Paul R. Stone
PAUL R. STONE, *Hearing Examiner*
Room 1019, Federal Building
500 Quarrier Street
Bureau of Hearings & Appeals
Charleston, West Virginia 25301

Date: Mar. 18, 1969

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

DECISION OF APPEALS COUNCIL

In the case of	Claim for
Marion P. Morris o/b/o Linda G. Morris (*Claimant*)	Child's Insurance Benefits 232-18-6710 (*Social Security Account Number*)
Marion P. Morris (*Wage Earner*)	

This case is before the Appeals Council on its own motion to review the decision of the hearing examiner rendered on March 18, 1969, on the claimant-wage earner's claim on behalf of Linda G. Morris (the child) for child's insurance benefits under title II of the Social Security Act, as amended. The claimant and his attorney were notified of this action on April 16, 1969, and were apprised of their rights with respect thereto.

In his decision, the hearing examiner held that the child was entitled to child's insurance benefits pursuant to the application filed on her behalf on February 28, 1968.

The hearing examiner's statements with respect to the pertinent provisions of the Social Security Act, as amended, Social Security Administration Regulations No. 4, and the evidentiary facts before him are incorporated herein by reference and supplemented as hereinafter indicated. However, the Appeals Council does not adopt the inferences, findings, or conclusions of the hearing examiner.

The primary issue before the Appeals Council is whether the claimant is entitled to child's insurance benefits on behalf of Linda G. Morris. This determination rests upon the specific issues of whether the child meets the dependency requirements for an adopted child, or in the alternative, whether she may be considered a child of the wage earner at one of the required times when she did meet the dependency requirements.

The essential facts in this case are not in dispute and show that the wage earner, who was born on November 28,

1905, filed application for a period of disability and disability insurance benefits on June 25, 1957, and was found entitled to a period of disability beginning with September 30, 1953, and to disability insurance benefits effective with July 1957. On October 22, 1966, he filed an application for child's insurance benefits on behalf of Linda, his grandchild, who was born on March 7, 1965, and was legally adopted by the wage earner on October 13, 1966. This application was disallowed by the Administration because Linda had not been born or adopted within the 24 month period following the wage earner's entitlement to disability insurance benefits. The claimant's request for a hearing was filed too late and was accordingly dismissed by the hearing examiner and a request for review of this action was denied by the Appeals Council on June 13, 1968.

However, a second application was filed on behalf of Linda on February 28, 1968 for consideration of the case under the 1967 Amendments to the Social Security Act. This application was also disallowed by the Administration because Linda's adoption had not been supervised by a public or private child-placement agency. Upon a request for hearing, the hearing examiner, without holding a hearing, issued a decision on September 20, 1968 which held that Linda was entitled to child's insurance benefits under the law as it existed prior to the 1967 Amendments as well as under the provisions of the 1967 Amendments. The Appeals Council decided to review this decision on its own motion, and by an order dated January 3, 1969, remanded the case to a hearing examiner to hold a hearing and issue a decision. Pursuant to this order, a hearing was held and a decision was issued on March 18, 1969 which held that although Linda was not entitled to child's insurance benefits under the law as it existed prior to the 1967 Amendments, she was entitled to said benefits under the provisions of the 1967 Amendments.

The Appeals Council will first consider the question of Linda's entitlement under the law as it existed prior to the 1967 Amendments to the Social Security Act.

Section 202(d)(1) of the Social Security Act (42 USCA 402(d)(1)), provided, in pertinent part, that every child of an entitled individual is entitled to child's insurance benefits if, among other requirements, he was dependent

upon such individual at the time the child's application was filed or, in the case of an individual entitled to disability insurance benefits, at the beginning of such period of disability or at the time he became entitled to such benefits.

Section 202(d)(9) of the Act (42 USCA 402(d)(9)), provided in pertinent part, that in the case of an individual entitled to disability insurance benefits, a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child is the natural child or stepchild of such individual, or was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual r st recently became entitled to disability insurance benefits.

The intent and application of section 202(d)(9) were discussed in a Social Security Ruling (SSR 66-14). It was explained that Congress intended to limit sections 202 (d)(1) and 202(d)(3) in the case of children adopted after a wage earner's entitlement to benefits. The ruling holds that an adopted child who is not a natural child or stepchild is deemed not dependent at the time his application is filed unless his adoption took place within the required 24-month period.

In applying the Act to the instant case, the evidence showed that Linda was not in existence either at the beginning of the wage earner's period of disability or at the time of his entitlement to disability insurance benefits. Hence, she was not dependent on the wage earner at either of these times. The only remaining point of time at which she could be dependent is the time her application was filed, but she is deemed not dependent at this time by the express terms of section 202(d)(9), because her legal adoption was not accomplished within the required 24-month period. Accordingly, Linda was not dependent upon the wage earner, and was not entitled to child's insurance benefits under the Social Security Act in effect prior to the 1967 Amendments, and the Appeals Council so finds.

The 1967 Amendments to the Social Security Act added an alternative to the 24-month requirement in section 202

(d)(9) (presently section 202(d)(8)) in the form of subparagraph (E) which provides that a child may be deemed dependent if such child was legally adopted "in an adoption which took place under the supervision of a public or private child-placement agency."

The evidence herein shows that the adoption of Linda was pursuant to a petition filed in the Juvenile Court of Raleigh County, West Virginia on October 13, 1966, by the wage earner and his wife, which moved that the Judge of said Court file such petition and refer the matter to Joe Asbury, a town Policeman, for investigation and report. On the same day, the matter came on for hearing, Mr. Asbury filed his report, and the Court found the petition true, that Linda was the grandchild of the petitioners, that no other interested parties were present, and thereupon decreed the adoption (Exhibit 12).

In deciding whether the Juvenile Court was a public child-placement agency, the hearing examiner discussed the fact that there is no other public child-placement agency in Raleigh County, West Virginia, the County in which the adoption action must necessarily have been brought. The argument was advanced that it would be discriminatory to hold that Linda's adoption did not comply with the provisions of the statute inasmuch as there was no orthodox child-placement agency available. The hearing examiner was of the further opinion that the Juvenile Court fell within a generic definition of the term "child-placement agency" since its functions were mostly placement in nature. Finally, the hearing examiner felt compelled to find that the Juvenile Court was a public child-placement agency to comply with the constitutional concept of equal protection of the laws. For these reasons, the ultimate conclusion of the hearing examiner was that the Juvenile Court was a public child-placement agency within the meaning of section 202(d)(8)(E).

The conclusion of the hearing examiner is in direct conflict with the express terms of section 404.323 of the Social Security Administration Regulations No. 4 (20 CFR 404.323) which states in pertinent part as follows:

> "For the purposes of paragraph (a)(5)(iii) of this section, the term 'public child-placement agency' means any governmental agency authorized by a state *** to

> place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption."

The clear and unambiguous terms of the regulation are conclusive that the Juvenile Court does not meet the definition of a "public child-placement agency."

Furthermore, it is equally clear that the court appointed investigator in this case, Joe Asbury, does not qualify since as a town policeman he had no authority to place children in private homes for adoption.

A situation analogous to the one presented here is discussed in a Social Security Ruling (SSR 68-55). The adoption in that case was supervised by the Probate Court of X County, Ohio who appointed an investigator who made the required investigation and report. The investigator was not associated with a child-placement agency and there was no certified agency or board in X County, Ohio, which could supervise adoptions. In holding that the adoption did not comply with section 202(d)(8)(E) the ruling stated:

> "That section requires that the legal adoption of a child by an individual already entitled to disability benefits take place under the supervision of a public or private child-placement agency. The rule is a Federal one, operative without regard to the law of any particular State, and requires actual supervision of the adoptee's placement by a recognized placement agency."

The undisputed evidence herein shows that neither the Juvenile Court nor the court investigator exercised any supervision over the placement of Linda in the home of the wage earner.

For the foregoing reasons, the Appeals Council hereby finds that Linda's adoption was not accomplished under the supervision of a public or private child-placement agency as required by section 202(d)(8)(E) of the Act, as amended.

With regard to the issue raised concerning the constitu-

tionality of section 202(d)(8)(E), neither the hearing examiner nor the Appeals Council has the authority to consider or rule upon the constitutionality of any provision of the Social Security Act, and any comment upon this issue would be inappropriate.

The Appeals Council is constrained to comment on one further aspect of this case. The initial decision of the hearing examiner issued on September 20, 1968, made reference to the fact that Linda could possibly have been equitably adopted by the wage earner under the doctrine set forth in *Davis* v. *Celebrezze,* 239 F. Supp. 608. No attempt was made to secure evidence in this regard because entitlement was sustained on other grounds. The record discloses only that Linda was the illegitimate child of the wage earner's daughter and that she was in the uninterrupted custody of the wage earner since November 29, 1965, at which time she was approximately 8 months old. Even if the evidence did establish a valid contract to adopt, i.e., an "equitable adoption," as of November 29, 1965, the date Linda came into the wage earner's custody, such fact would not result in Linda's entitlement since such an "equitable adoption" clearly did not take place within the required time.

Accordingly, it is the decision of the Appeals Council that Linda G. Morris is not entitled to child's insurance benefits for which application on her behalf was filed on February 28, 1968. The decision of the hearing examiner is hereby reversed.

APPEALS COUNCIL

/s/ Irving Trager
IRVING TRAGER, *Member*

/s/ Lucille V. Covey
LUCILLE V. COVEY, *Member*

Date: May 27, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MARION P. MORRIS o/b/o LINDA G. MORRIS, PLAINTIFF, v. ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, DEFENDANT.	Civil Action No. 69-145 CH

MEMORANDUM OPINION

[Filed, Apr. 29, 1971, Clerk's Office, U.S. Dist. Court, So. Dist. of W. Va. JAMES A. McWHORTER, *Clerk*]

This is an action instituted by the petitioner, Marion P. Morris, to review a final decision of the Secretary of Health, Education and Welfare. That decision which was handed down by the Appeals Council on May 27, 1969, is to the effect that Linda G. Morris is not entitled to child's insurance benefits for which application on her behalf was filed on February 28, 1968.

On October 20, 1966, Marion P. Morris filed an application for child's insurance benefits under Title II of the Act on behalf of Linda G. Morris. That application was denied initially and on reconsideration, and the petitioner did not further pursue the matter. On February 28, 1968, the petitioner filed a second application on behalf of Linda G. Morris based on the 1967 amendments to the Act. That application was denied initially and on reconsideration, following which the petitioner requested a hearing. The hearing examiner determined that an oral hearing was not necessary and issued his decision on September 20, 1968, in which he held that Linda G. Morris was entitled to child's insurance benefits on the basis of both the 1966 and 1968 applications. The Appeals Council on its own motion decided to review this decision and subsequently returned the case to the hearing examiner to hold a hearing and receive additional evidence into the record.

The hearing was held on February 6, 1969. On March

18, 1969, the hearing examiner issued a decision in which he held that although the petitioner was not entitled to benefits on behalf of the child based on the 1966 application, he was entitled to such benefits under the 1967 amendments on the application filed in 1968. The Appeals Council reviewed the hearing examiner's decision on its own motion and on May 27, 1969, issued its decision reversing the hearing examiner and holding that petitioner was not entitled to the benefits sought. The decision of the Appeals Council thereby became the final decision of the Secretary.

The case is now before this Court on the Secretary's motion for summary judgment. Under 205(g) of the Act, 42 U.S.C.A. § 405(g), this Court has the power and the duty to review the findings of the Secretary to ascertain if they are supported by substantial evidence, and also to review the validity of regulations prescribed under the Act. Upon this motion, the Court must determine whether the reversal of the hearing examiner's decision by the Appeals Council was supported by substantial evidence and also whether the controlling regulations are valid. *Matczak* v. *Secretary of Health, Education and Welfare*, 299 F. Supp. 409 (E.D. N.Y. 1969).

The essential facts in this case are not in dispute and show that the petitioner filed an application for a period of disability and disability insurance benefits on June 25, 1957, and was found to be entitled to a period of disability beginning September, 1953, and to disability insurance benefits effective July, 1957. On March 7, 1965, plaintiff's daughter gave birth to Linda and shortly thereafter the petitioner and his wife took Linda into their home. Linda is the petitioner's only dependent other than his wife. By Court order dated October 13, 1966, the Juvenile Court of Raleigh County, West Virginia, decreed the adoption of the child by the petitioner and his wife. Prior to the adoption, the case was investigated by a court investigator who returned a favorable report.

Under the 1967 amendments to the Act, it is provided that a child may be deemed dependent if such child was legally adopted in an adoption which took place under the supervision of a public or private child-placement agency, 42 U.S.C.A. § 402(d)(8)(E). Under Social Security Administration Regulation No. 4, section 404.323(c) subsection (1) it is provided:

> "For the purposes of paragraph (a)(5)(iii) of this section, the term 'public child-placement agency' means any governmental agency authorized by a state * * * to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption."

It would appear to be the Secretary's position that this regulation acts as a barrier to unwise adoptions by Social Security beneficiaries seeking to increase their benefits. The Court is well aware of the practical importance and necessity of such a barrier. However, in the instant case, Linda is the grandchild of the petitioner and his only dependent other than his wife. Furthermore, and most importantly, under West Virginia Law (Code, Chapter 48, Article 4, Section 1) adoption must take place in the county wherein those adopting reside. Accordingly, petitioner and his wife being residents of Raleigh County, the adoption could only take place in Raleigh County. Raleigh County does not, or at least at that time, did not, have a public or private placement center or agency for children. The same is true in many rural counties in this state and probably other states as well.

While the administrative regulations of the Social Security Act are entitled to great weight, they are not controlling. *Kandelin v. Social Security Board*, 136 F.2d 327 (2nd Cir. 1943); *Matczak v. Secretary of Health, Education and Welfare, supra.* Here, we have a situation in which the Secretary's regulations would prohibit Linda and others like her in rural communities in West Virginia from ever qualifying for children's benefits, while their counterparts in larger communities can qualify because in the larger communities the necessary facilities and agencies are available to them. This Court therefore concludes that Social Security Administration Regulation No. 4, Section 404.323(c), Subsection (1), as applied by the Secretary to the facts in this case, is arbitrary, restrictive, unjust and invalid.

Accordingly, the Secretary's motion for summary judg-

ment is denied, and an order granting petitioner child's insurance benefits on behalf of Linda G. Morris will be entered. Counsel may prepare an appropriate order incorporating this opinion by reference therein.

/s/ Illegible
United States District Judge

Dated at Charleston
April 28, 1971

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

MARION P. MORRIS o/b/o LINDA G. MORRIS, PLAINTIFF, v. ELLIOT L. RICHARDSON, Secretary of Health, Education, and Welfare, DEFENDANT.	Civil Action No. 69-145-CH

ORDER

The above-styled action came on before this Court upon motion for summary judgment filed by the defendant, and this cause having been submitted on brief of the defendant and the transcript of the record and all of the proceedings certified to this Court in the manner prescribed by law, and this Court having made its findings of fact and conclusions of law, as appears from the Memorandum Opinion of this Court dated April 28, 1971, which is incorporated by reference herein,

Upon consideration of all of which it is ADJUDGED and ORDERED that the defendant's motion for summary judgment be overruled, and that the final decision of the Secretary be reversed and remanded with directions to grant petitioner child's insurance benefits on behalf of Linda G. Morris, in conformity with the findings of fact and conclusions of law set forth in the Opinion,

And it is further ADJUDGED, ORDERED and DECREED that counsel for defendant shall file with this Court a report stating the benefits to be paid to the plaintiff pursuant to this judgment order, and particularly the amount of the initial payment to be made to the plaintiff and/or any other persons pursuant to this judgment. A copy of such statement of benefits shall be furnished to counsel for the plaintiff who may thereafter file with this Court a petition for the approval and allowance of a fee for services rendered to the plaintiff in this case. No fee shall be paid to or received by the attorney for the plaintiff

other than the amount approved and allowed by this Court pursuant to such petition, and this case shall remain upon the docket for that purpose.

ENTER:

/s/ Illegible
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 71-1757

MARION P. MORRIS o/b/o LINDA G. MORRIS,

APPELLEE,

versus

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare,

APPELLANT.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston.
John A. Field, Jr., Chief Judge.

(Argued December 6, 1971 Decided January 28, 1972.)

Before BRYAN, WINTER and BUTZNER, Circuit Judges.

Michael Kimmel, Attorney, Department of Justice, (L. Patrick Gray, III, Assistant Attorney General, Walter H. Fleischer, Attorney, Department of Justice, and W. Warren Upton, United States Attorney, on brief) for Appellant, and E. Lee Schlaegel, Jr. (Avis and Schlaegel, on brief) for Appellee.

PER CURIAM:

Plaintiff, a recipient of social security disability benefits since 1957, adopted his granddaughter in 1966 and sought child's insurance benefits for her immediately after the adoption was decreed. His application under the then existing statute was denied because the requirement of the statute that the adoption occur within two years after plaintiff had become entitled to disability benefits was not met. In 1968 the Social Security Amendments of 1967, 81 Stat. 821, became effective, and they extended child's insurance benefits to after-adopted children of disability

beneficiaries regardless of when the adoption took place so long as the other conditions of the statute were met. Plaintiff then submitted a second application for child's insurance benefits. It was denied by the Secretary on the ground that the adoption had not been supervised by a public or private child-placement agency as the statute, as amended, and the Secretary's regulation, required.

Plaintiff sought review in the district court which, noting that under West Virginia law an adoption must take place in the county of residence of the adopting parents and that plaintiff's county of residence did not have a public or private placement center or agency for children, concluded that the Secretary's regulation, defining the term "public child-placement agency" not to include a court, was invalid and ordered child's insurance benefits to be granted. In this appeal by the Secretary, we conclude that the conditions of the statute were not met and that the statute and the regulations were valid. We, therefore, reverse.

— I —

The adoption proceeding was filed in the Criminal Court of Raleigh County (acting as the Juvenile Court of Raleigh County), West Virginia. On the same day that the proceeding was filed, three things occurred: (1) the matter was referred to the Town Policeman for Whitesville, West Virginia, for investigation and report to the court, (2) a hearing was held at which the policeman reported favorably for the adoption, and (3) the adoption was decreed. It is conceded that Raleigh County had no local child-placement agency, public or private, and it is further conceded that West Virginia law requires that adoptions must be decreed in the county where the adoptive parents reside. W.Va.Code § 48-4-[illegible] (1966).

— II —

Prior to the Social Security Amendments of 1967 the adopted child of a recipient of disability benefits was eligible for child's insurance benefits *only* if he was "legally adopted before the end of the 24-month period beginning with the month after the work in which such individual [recipient of disability benefits] became en-

titled to disability insurance benefits." § 202(d)(8)(D) of the Act, 42 U.S.C.A. § 402(d)(8)(D). The 1967 Amendments retained this provision but added, as an alternative ground of qualification, that the child:

> (E) was legally adopted by such individual—
>
> (i) in an adoption which took place under the supervision of a public or private child-placement agency,
>
> (ii) in an adoption decreed by a court of competent jurisdiction within the United States,
>
> (iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;
>
> (iv) at a time prior to the attainment of age 18 by such child.

§ 202(d)(8)(E) of the Act; 42 U.S.C.A. § 402(d)(8)(E).

The Secretary's regulation, 20 C.F.R. § 404.323, implements the statute. In addition to stating the several conditions prescribed by the statute (§ 404.323(a)(5)(iii)), it defines "public child-placement agency" as "any governmental agency authorized by a State . . ., or local governmental agency or component of either to place child in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption." (§ 404.323(c)(1))

By the terms of the Act, § 202(d)(8)(E), the after-adopted child of a social security disability insurance recipient, in order to be eligible for child's insurance benefits, must meet at least two conditions. The first is that the adoption took place under the supervision of a public or private child-placement agency, and the second is that the adoption be decreed by a court of competent jurisdiction within the United States. In extending eligibility for child insurance benefits to children beyond those adopted within two years after their adoptive parents became eligible for disability benefits, Congress intended a two-step process to

guard against an abuse of liberalized eligibility by adoptions for the sole purpose of creating eligibility for child insurance benefits. 113 Cong. Rec. 33196-7. By establishing the two separate requirements, Congress evidenced no intention to permit one of the requirements to suffice for the other. This was the conclusion reached in Hagler v. Finch, —— F.2d ——, —— (9 Cir. 1971), where the suitability of grandparents' adoption of their grandchild was investigated only by an adoption examiner, an employee of the court decreeing the adoption, and where it was held that the child was, therefore, ineligible for child insurance benefits under the Act; and we agree. It follows that the Secretary's regulation stating that a court does not constitute a "public child-placement agency" is in accord with the statute and, hence, is valid, and that the adoption in the instant case was not accomplished in a manner which qualifies the child as one eligible to receive child insurance benefits under § 202(d)(8)(E) of the Act or the Secretary's regulation.

We see no denial of equal protection in this case. West Virginia law does permit the West Virginia State Department of Welfare to assume the permanent care, custody and guardianship of any child throughout the state and to consent to the adoption of the child in an adoption proceeding. W.Va.Code § 49-3-1 (1966). Thus, had plaintiff's granddaughter been relinquished by her parents to the Department of Welfare, it could have investigated the suitability of her grandparents as adoptive parents and consented to her adoption by her grandparents in the proceeding in Raleigh County. It cannot, therefore, be argued that the literal provisions of the statute or the regulation could not have been met, and, therefore, that the statute or the regulation discriminates against adopted children in Raleigh County, West Virginia.

For these reasons, the judgment of the district court is

REVERSED.

Albert V. Bryan, Circuit Judge, dissenting:

I would affirm the decision of the District Court on Judge Field's opinion. Morris v. Richardson —— FSupp. —— (S.D.W.Va. April 28, 1971). In the peculiar circumstances here, the regulation seems to me to be unwarrantably restrictive and arbitrary in excluding the adopting court from

the statutory phrase "public child-placement agency". The facts do not justify that interpretation of the statute in order to effectuate its terms.

There was no possibility of abuse of the law because the adoption of this child occurred before the benefits of the legislation were available to her foster parent. Moreover, it was too much to expect of him to anticipate any such infirmity in the child's adoptive status. To require him to seek an out-of-the county agency when the State law demanded that the adoption be accomplished in the county of residence, was also unreasonable. The majority would have the grandfather "relinquish" the child to the State and thereafter endeavor to adopt her. This seems to me to be well beyond the exaction of the statute.

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 71-1757

MARION P. MORRIS o/b/o
LINDA G. MORRIS,

APPELLEE,

VS.

ELLIOT L. RICHARDSON, Secretary
of Health, Education, and Welfare,

APPELLANT.

Appeal from the United States District Court for the Southern District of West Virginia.

This cause came on to be heard on the record from the United States District Court for the Southern District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed.

Filed, Jan. 28, 1972, SAMUEL W. PHILLIPS, *Clerk*

/s/ Samuel W. Phillips
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed Feb. 22, 1972, SAMUEL W. PHILLIPS, *Clerk*

No. 71-1757

MARION P. MORRIS o/b/o LINDA G. MORRIS,

APPELLEE,

versus

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare,

APPELLANT.

ORDER

The petition for rehearing having been read and considered, it is, with the concurrence of Judge Butzner, *ORDERED,* that the petition be, and it is hereby, denied.

Judge Bryan dissents from the entry of this order for the reasons set forth in his dissenting opinion, heretofore filed.

For the Court:

/s/ Illegible
United States Circuit Judge

SUPREME COURT OF THE UNITED STATES

No. 71-6698

MARION P. MORRIS, on behalf
of LINDA MORRIS,

PETITIONER,

v.

ELLIOT L. RICHARDSON, Secretary
of Health, Education and Welfare.

On petition for writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 10, 1972

☆ U.S. Government Printing Office: 1972—490-933/376

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

SUPREME COURT, U. S.
FILED
DEC 29 1972
MICHAEL RODAK, JR., CLERK

No. 71-6698

MARION P. MORRIS, On Behalf of
LINDA GAIL MORRIS,

Petitioner,

v.

ELLIOT L. RICHARDSON, Secretary of
Health, Education and Welfare,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE

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OCTOBER TERM, 1972

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MARION P. MORRIS, On Behalf of
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ELLIOT L. RICHARDSON, Secretary of
Health, Education and Welfare,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals (App. 52) is reported at 455 F.2d 775. The opinion of the District Court (App. 46) is reported at 335 F. Supp. 1178.

JURISDICTION

The judgment of the Court of Appeals was entered on January 28, 1972. (App. 52). A timely petition for rehearing was denied on February 22, 1972. (App. 58). The petition for a writ of certiorari was filed on May 22, 1972 and was granted October 10, 1972. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in part, that "no person shall . . . be deprived of life, liberty, or property, without due process of law."

The Tenth Amendment to the Constitution of the United States provides that "The powers not delegated to The United States by The Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The statute at issue is the Social Security Act, as amended. As of the date of the decisions below, Section 202(d)(1) of the Act, 42 U.S.C. §402(d)(1), read, in pertinent part, as follows:

> (d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child--
>
> (A) has filed application for child's insurance benefits,
>
> * * * * *
>
> (C) was dependent upon such individual--
>
> * * * * *

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs–

(D) the month in which such child dies, marries, or is adopted (except for adoption by a stepparent, grandparent, aunt, uncle, brother, or sister subsequent to the death of such fully or currently insured individual),

* * * * *[1]

---

[1] Section 202(d)(1)(D) was amended by Section 112 of The Social Security Amendments of 1972, 86 Stat. 1347 (October 30, 1972). Section 112 reads as follows:

Sec. 112. (a) Paragraph (1)(D) of section 202(d) of the Social Security Act is amended by striking out "marries" and all that follows and inserting in lieu thereof "or marries,":

(b) The amendment made by subsection (a) shall apply only with respect to monthly benefits under title II of the Social Security Act for months beginning with the month in which this Act is enacted.

(c) Any child–

(1) whose entitlement to child's insurance benefits under section 202(d) of the Social Security Act was terminated by reason of his adoption, prior to the date of the enactment of this Act, and

(2) who, except for such adoption, would be entitled to child's insurance benefits under such section for a month after the month in which this Act is enacted,

may, upon filing application for child's insurance benefits under the Social Security Act after the date of enactment of this Act, become reentitled to such benefits; except that no child shall, by reason of the enactment of this section, become reentitled to such benefits for any month prior to the month after the month in which this Act is enacted.

Section 202(d)(3) of the Act reads, in pertinent part, as follows:

> (3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—
>
> (A) Such child is neither the legitimate nor adopted child of such individual, or
>
> (B) Such child has been adopted by some other individual***.

Section 202(d)(8) of the Act provided, as of the dates of the application for benefits and decisions below, in this case:

> (8) In the case of—
>
> (A) an individual entitled to disability insurance benefits, or
>
> (B) an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits, a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) of this subsection unless such child—
>
> (C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or
>
> (D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual which still exists at the time of such adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or

(ii) such adopted child was living with such individual in such month; or

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child-placement agency,

(ii) in an adoption decreed by a court of competent jurisdiction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

(iv) at a time prior to the attainment of age 18 by such child.[2]

---

[2]Subsequent to the grant of certiorari in this case, Congress enacted, and the President signed into law, The Social Security Amendments of 1972. Act of October 30, 1972, Pub. L. No. 92-603, 86 Stat. 1346. Section 111 of The 1972 Amendments, which changed Section 202(d)(8), reads as follows:

Sec. 111. (a) Section 202(d) of the Social Security Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof the following new paragraph:

"(8) In the case of—

"(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

"(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

Section 216(e) of the Act reads, in pertinent part, as follows:

---

a child of such individual adopted after such individual became entitled to such old-age disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child–

"(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

"(D) (i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

"(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits, and

"(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child."

(e) The term "child" means (1) The child or legally adopted child of an individual, and (2) a stepchild ***.

Section 404.323(c) of Social Security Administration Regulation No. 4, 20 C.F.R. 404.323(c), reads, in pertinent part, as follows:

(c) *Adoption under the supervision of a public or private child-placement agency.* (1) *Public child-placement agency.* For the purposes *** of this section, the term "public child-placement agency" means any governmental agency authorized by a State *** or local governmental agency or component of either to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the Court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption.

(2) *Private child-placement agency.* For the purposes *** of this section, the term "private child-placement agency" means any individual, corporation, organization, or institution licensed or approved by a State or local governmental agency or

---

(b) The amendment made by subsection (a) shall apply with respect to monthly benefits payable under title II of the Social Security Act for months after December 1967 on the basis of an application filed in or after the month in which this Act is enacted; except that such amendments shall not apply with respect to benefits for any month before the month in which this Act is enacted unless such application is filed before the close of the sixth month after the month in which this Act is enacted.

component of either to place children in a private home for adoption. * * *

(3) *Supervision by a child-placement agency.* For purposes of * * * this section, the term "supervision of a public or private child-placement agency" means that such agency as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations based on such suitability and eligibility, to the court having jurisdiction of the adoption proceedings. This requirement is not met if such investigation, report, or recommendation by such an agency was not made, whether because it was waived, or because it is not required under applicable State law, or for any other reason.

At the time of the adoption at issue in this case, Section 48-4-1 of the West Virginia Code (Michie's 1966) read, in pertinent part, as follows:

> It shall be lawful for . . . any husband and wife jointly, to petition the circuit court of the county wherein . . . they may reside, or the judge of such court in vacation, for permission to adopt any minor child . . .[3]

At the time of the adoption at issue in this case, Section 48-4-8 of the West Virginia Code (Michie's 1966), read as follows:

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[3] An amendment to this section merely added after the words "circuit court" the words "or any other court of record having jurisdiction of adoption proceedings." Section 48-4-1, West Virginia Code (1972 Supp.).

In counties where the circuit court does not sit as a juvenile court, concurrent jurisdiction in adoption proceedings is hereby extended to such juvenile courts.[4]

Section 49-5-1 of the West Virginia Code (Michie's 1966), reads as follows:

The circuit court of the county shall have original jurisdiction in proceedings brought by petition under this article. If, however, a court of record in addition to the circuit court has been or is subsequently created in a county, proceedings under this article shall be held in the additional court with right of appeal to the circuit court as follows:

(1) The domestic relations court, or if there is none,

(2) The court of common pleas or intermediate court having chancery jurisdiction, or if there is none,

(3) The criminal court.

Section 48-4-3 of the West Virginia Code (Michie's 1966), *as amended*, reads, in pertinent part, as follows:

Upon the presentation of such petition to the court, or the judge of such court in vacation, the same shall be ordered filed with the clerk of such court, and the court or judge thereof shall appoint a day for the hearing of such petition and the examination under oath of the parties in interest. * * * Between the time of the filing of the petition for adoption and the hearing thereon, the court or judge thereof shall, unless the court or judge otherwise directs, cause a discreet inquiry to be

---

[4] This section of the Code was repealed when the change noted in the preceding footnote (p. 8) made it unnecessary.

made to determine whether such child is a proper subject for adoption and whether the home of the petitioner or petitioners is a suitable home for such child. Any such inquiry, if directed, shall be made by any suitable person or agency designated by the court, or judge thereof, and the results thereof shall be submitted to the court or judge thereof at or prior to the hearing upon the petition and shall be filed with the records of the proceeding and become a part thereof. * * * Upon the day so appointed the court or judge thereof shall proceed to a full hearing of the petition and examination of the parties in interest, under oath and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and education the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make an order reciting at length the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and his or her parents, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the

child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article.[5]

Section 48-4-4 of the West Virginia Code reads, in pertinent part, as follows:

> * * * All records of proceedings in adoption cases and all papers and records relating to such proceedings shall be kept in the office of the clerk of the court in a sealed file, which file shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except upon court order for good cause shown. No person in charge of adoption records shall disclose the names of the adopting parent or parents or adopted child except by court order. The clerk of the court keeping and maintaining the records in adoption cases shall keep and maintain an index of such cases separate and distinct from all other indices kept or maintained by him, and the index of adoption cases shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except upon court order for good cause shown. * * *
>
> * * * [T]he said registrar of vital statistics shall forthwith issue and deliver by mail to the adopting parents at their last known address and to the clerk of the county court of the county wherein such order of adoption was entered a birth certificate in the form required by law, except that the name of

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[5] For simplicity, this Section, and the following two Sections of West Virginia's adoption law are reproduced in their current form. Each has been amended slightly, but not significantly, since 1966, the year of the adoption in this case.

the adoptee shown in said certificate shall be the name given him by the order of adoption. * * *

Section 48-4-5 of the West Virginia Code reads, in pertinent part, as follows:[6]

> Upon the entry of such order of adoption, the natural parent or parents * * * shall be divested of all legal rights, including the right of inheritance from or through the adopted child under the statutes of descent and distribution of this State, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such parent or parents. From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.
>
> For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, but such child shall not inherit from his or her natural parent or parents nor their lineal or collateral kindred, except that a child

---

[6]To keep this section from being any bulkier than it already is, certain additional sections of the West Virginia Code, the text of which is not important to the issues of this case, but which are cited in the Argument, have not been reproduced here.

legally adopted by a husband or wife of the natural parent shall inherit from the natural parent of such child as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this State, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

QUESTIONS PRESENTED

1. Whether the provisions of Section 202(d)(8) of the Social Security Act, when applied to deny benefits to certain adopted children of disabled wage earners, conflict with the applicable decisions of this Court regarding the Constitutional guarantee of Due Process of Law.

2. Whether the provisions of the Social Security Act which discriminate between adopted children and natural children with regard to the payment of child's insurance benefits conflict and interfere arbitrarily and unconstitutionally with the State's plenary power in the realm of the adoption of children.

3. Whether the conflict between the provisions of Sections 202(d)(3) and (d)(8) of the Act should be resolved liberally in favor of the granting of benefits to certain adopted children of disabled wage earners.

4. Whether the regulation of the Social Security Administration excluding under all circumstances juvenile courts from the definition of "child-placement agency," as used in Section 202(d)(8) of the Social Security Act, is arbitrarily and unwarrantably restrictive.

STATEMENT OF THE CASE

Petitioner Marion P. Morris is a disabled wage earner who has been receiving Social Security disability insurance benefits since July, 1957. Petitioner and his wife took their granddaughter, Linda Gail Morris, into their home several months after her birth in March, 1965. Linda Gail has lived with petitioner continuously since that time at his home. On October 13, 1966, when Linda Gail was one and a half years old, petitioner and his wife adopted Linda Gail. (App. 27, 28) Nine days later, petitioner filed an application for child's insurance benefits for Linda Gail, which application was denied. (Vol. 2, R. 84).

Following passage of The Social Security Amendments of 1967, petitioner reapplied, on February 28, 1968, for child's benefits for Linda Gail. This application was ultimately denied by the Appeals Council of the Social Security Administration on the ground that the adoption of Linda Gail was not supervised by a child-placement agency as defined by Section 404.323 of Social Security Regulation No. 4, 20 C.F.R. 404.323. (App. 40)

This action was brought in federal district court by Marion P. Morris on behalf of Linda Gail Morris, to review the final decision of respondent Secretary of Health, Education and Welfare, that Linda Gail was not eligible for benefits. The jurisdiction of the district court was invoked pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. 405(g). (App. 47)

No question has been raised throughout the proceedings in this case as to the legal validity of the adoption or the humane motivations of the wage earner and his wife in undertaking to adopt their granddaughter. The issue in this case is the denial of child's insurance benefits solely on account of the *timing* and *manner* of the adoption of Linda Gail.

Linda Gail was placed in the home of wage earner and his wife while still an infant and from that time on was fully dependent upon them. (App. 28, 29) Then, as now, West Virginia law required that a child reside in the home of the adopting parents for at least six months before an adoption could be decreed. Section 48-4-1, West Virginia Code (Michie's 1966). Less than one year after Linda Gail came to live with them, wage earner and his wife petitioned to adopt Linda Gail. (App. 4)

Wage earner and his wife filed their petition to adopt Linda Gail in Raleigh County, the county of their residence, as required by State law. Section 48-4-1, West Virginia Code (Michie's 1966). Raleigh County is a rural county in southern West Virginia. There is no licensed private child-placement agency in the county, nor is there any independent public child-placement agency. (App. 34) In Raleigh County, the Criminal Court has been granted juvenile court jurisdiction. Section 49-5-1(3), West Virginia Code (Michie's 1966). The juvenile court has statutory authority to supervise the placement of children in suitable homes. Section 49-5-14, West Virginia Code (Michie's 1966).

At the time Mr. and Mrs. Morris adopted Linda Gail, the Social Security Act contained no provision permitting a child in Linda Gail's situation to qualify for child's insurance benefits if the adoption was supervised by a child-placement agency.[7] Having no particular reason to turn to the Welfare Department, Mr. and Mrs. Morris applied directly to the Juvenile Court for permission to adopt Linda Gail. The Court appointed the town policeman, a long-time resident of Raleigh County and an

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[7]Subparagraph (E) was added as an alternative to Section 202(d)(8)(D) by the Social Security Amendments of 1967.

officer for more than twenty years, to investigate the Morris home as a potential adoptive home. Following the investigation and a hearing, the Court decreed the adoption. (App. 4)

In his decision of March 18, 1969, the hearing examiner awarded benefits on two alternative grounds: (1) that the child qualified for benefits because she had complied with all necessary requirements of Sections 202(d)(1) and 202(d)(3) of the Act; and (2) that the Juvenile Court of Raleigh County was a child-placement agency within the meaning of Section 202(d)(8)(E) of the Act. (App. 36)[8]

The Appeals Council reversed, holding that Section 404.323 of Social Security Regulation No. 4, 20 C.F.R. 404.323 explicitly precluded the conclusion that a juvenile court was a child-placement agency for purposes of Section 202(d)(8)(E) and that Section 202(d)(9) of the Act[9] precluded a holding that Linda Gail was qualified for benefits under Sections 202(d)(1) and (3) of the Act. (App. 40)

In a Memorandum Opinion denying the Secretary's motion for summary judgment, the District Court for the Southern District of West Virginia held that Section 404.323 of Social Security Regulation No. 4, as applied to the facts of the instant case, in which Linda Gail was the granddaughter of the wage earner, in which the adoption was supervised by the Juvenile Court, in which

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[8]This was a revised decision written after a prior favorable decision by the same hearing officer, and after remand by the Appeals Council for a hearing. (App. 11, 23)

[9]Renumbered Section 202(d)(8) following the Social Security Amendments of 1967.

the adoption occurred in a rural county which has no separate and independent child-placement agency, was "arbitrary, restrictive, unjust and invalid." (App. 46, 48)

The Secretary appealed from this decision to the Fourth Circuit Court of Appeals, which reversed the decision of the District Court, concluding that the statute and regulation were valid, and that benefits should be denied. The majority found no denial of equal protection because, it said, the wage earner's daughter could have "relinquished" Linda Gail to the Department of Welfare and thereby the provisions of the statute and regulation could have been complied with. (App. 52, 55) Circuit Judge Bryan, dissenting, would have affirmed the decision of the District Court because under the facts of this case, the regulation is "unwarrantably restrictive and arbitrary in excluding the adopting court from the statutory phrase 'public child-placement agency'." (App. 55-56)

SUMMARY OF ARGUMENT

Section 202(d)(8) of the Social Security Act, which denies benefits to children adopted by a wage earner after the wage earner qualifies for benefits, except under certain circumstances, violates the Fifth Amendment's guarantee of due process of law. The restriction discriminates against adopted children on the sole ground that they are adopted, for similarly situated natural children of wage earners are entitled to child's insurance benefits. The discrimination is not rationally related to any legitimate governmental interest and encroaches upon the specially protected realm of parent-child relationships. The statute discriminates by creating an

irrebuttable presumption as to most adopted children that they were adopted for the purpose of abuse. By permitting benefits to be paid only for after-born, after-adopted children whose adoption was supervised by a child-placement agency as well as a court, Section 202(d)(8)(E) of the Act deprives children in areas lacking child-placement services the equal protection of the laws.

The State of West Virginia has drafted its adoption laws to assure that adopted children will be, in every respect, treated under the law the same as natural children of their adopting parents. Section 202(d) of the Social Security Act conflicts with the State law without any substantial or constitutionally delegated federal interest.

The terms of Section 202(d)(8) conflict with the terms of Sections 202(d)(1) and 202(d)(3) of the Act. Since Linda Gail fulfilled the requirements of Sections 202(d)(1) and 202(d)(3) when she applied, she should be granted benefits.

The regulation of the Social Security Administration which excludes a juvenile court from the definition of a child-placement agency is unwarrantably restrictive.

ARGUMENT

I.

THE PROVISIONS OF SECTION 202(d)(8) OF THE SOCIAL SECURITY ACT CONFLICT WITH DECISIONS OF THIS COURT REGARDING THE GUARANTEES OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The provisions of Section 202(d)(8) of the Social Security Act, prior to the 1972 amendments, as interpreted by the Social Security Administration, created two kinds of discriminatory classifications: (1) they discriminated on their face between adopted children and natural children, and (2) they discriminated in practice against families in rural areas and other areas lacking child-placement facilities.[10]

This discrimination consisted essentially in the arbitrary and irrebuttable presumption, created by statute, that children adopted by disabled wage earners,

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[10]The 1972 amendments to Section 202(d)(8) removed the discrimination against families in areas lacking child-placement facilities by removing altogether the provisions of Section 202(d)(8)(E), permitting child's insurance benefits to be paid under certain circumstances to a child adopted by a disabled wage earner, even though the child had not lived with the wage earner prior to the time he became disabled. The effect of the 1972 amendments is to intensify the discrimination against adopted children, as compared with natural children. Under the 1972 amendments *no* adopted child can qualify for benefits as a dependent of his adopting parents unless he or she was born and was living with the adopting wage earner during the year before the adopting wage earner became disabled. Section 111, Public Law 92-603, 86 Stat. 1346 (October 30, 1972).

and not adopted within the provisions of Sections 202(d)(8)(D) or (E), were adopted for purposes of abuse. Prior to the 1972 amendments, adopted children who did not live with the wage earner before he became disabled were categorically denied benefits on the adopting parent's account, unless the adoption was supervised by a child-placement agency. There was no such denial to after born biological children of disabled wage earners.[11]

A. The Provisions of Section 202(d)(8) Discriminate Arbitrarily and Unconstitutionally Against a Class of Children Simply Because They Are Adopted.

In 1960, the Social Security Act was amended to provide child's insurance benefits to the natural children of disabled wage earners born after the wage earner had become disabled. Prior to the amendments all dependent children born after a wage earner became disabled were barred from benefits. The arbitrariness of this rule was recognized and the law was changed to permit benefits

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[11] The term "after-born" is used herein to refer to children born after the wage-earner became disabled and qualified for Social Security disability insurance benefits. The term "after-adopted" is used herein to refer to children adopted by the wage earner after the wage earner became entitled to disability insurance benefits. In this case petitioner's adopted daughter was both "after-born" and "after-adopted."

The 1972 amendments provided that *no* after-adopted child may qualify for benefits unless he or she was living with the wage earner for a year before he or she became disabled. A child born during that year must live with the wage earner, and be dependent upon him or her continuously from the date of birth. No provision is made for benefits for children like Linda Gail, born after the wage earner became entitled to disability insurance. Section 111, Public Law 92-603, 86 Stat. 1346 (October 30, 1972).

for after-born children. Section 201 of Public Law 86-778, 74 Stat. 924, amending Section 202(d)(1), 42 U.S.C. §402(d)(1) of the Social Security Act. [12]

It was at the time of the 1960 amendments that the distinction was first made between after-born natural and adopted children. The purpose of the change to include after-born children was explained as follows in Senate Report No. 1856 on The Social Security Amendments of 1960, 2 U.S. Cong. and Ad. News 3643 (Aug. 19, 1960).

> 8. *Correcting technical flaws in the law.*
>
> (a) Because of a technical defect in the law, benefits cannot now be paid in cases where a child of a disabled person is born or adopted after the worker becomes disabled, or where a child becomes a stepchild through a marriage occurring after the worker becomes disabled . . .

Neither in the Senate Report nor the Conference Report, Conference Report No. 2165, 2 U.S. Cong. and Ad. News 3749, 3753 (Aug. 25, 1960), is any explanation given for the reasons for discrimination against after-adopted children.[13] This distinction has been perpetuated from year to year since 1960.

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[12] The 1960 amendments amended Section 202(d)(1) to provide that an after-adopted child could qualify for benefits only if (1) the adoption was decreed within two years after the month the wage earner became entitled to disability benefits, and (2) the child had been living with the wage earner, or proceedings had been instituted to adopt the child in or before the month the wage earner became entitled to benefits.

[13] The House Report was not reprinted in the U.S. Cong. and Ad. News, and was not available to counsel for petitioner.

1. *The provisions of Section 202(d)(8) which discriminate against adopted children are not rationally related to any proper governmental purpose.*

As justification for the Act's discrimination against after-born adopted children, the legislative history contains, from time to time, the bare assertion that the purpose of the discrimination is to "prevent abuse."[14] Petitioner contends that the mere assertion that the purpose of a law is "to prevent abuse" does not, without more, constitute proof of a rational relationship to a legitimate governmental purpose. At no point in the legislative history does there appear any data, any expert testimony, any evidence of public debate or rational

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[14] Purpose was to provide "safeguards against abuse through adoption of children solely to qualify them for benefits. . . ." S. Rep. No. 404, 89th Cong., 1 U.S. Cong. and Ad. News 2048 (1965). Note that this was explaining a change in the rules relating to after-adopted children of retired workers, as opposed to disabled workers.

Purpose of amendments is to keep provisions relating to "after-adopted" children from being "unnecessarily complex" and include "safeguards against abuse through adoption of children solely to qualify them for benefits." Report of The Sen. Finance Committee on H.R. 1, Sen. Rept. No. 92-1230, 92d Cong., 2d Sess. (Sept. 26, 1972) at 141.

But cf., Purpose of modification "to make the requirements uniform" (as regards after-adopted children of retired as well as disabled workers). Rept. of Hse. Ways and Means Committee on H.R. 1 (1971), and purpose of modification "to make the requirements uniform" (as regards after-adopted children of disabled and retired workers). Conference Committee Report on H.R. 1, 92d Cong., 2d Session (Oct. 17, 1972), at 3.

And cf., Purpose of modification "to correct technical flaws." Sen. Rept. No. 1856 (Aug. 19, 1960), *supra*, p. 21.

discourse on the subject. And for good reason: There is no rational justification for the provision.

The only discourse of any kind about Section 202(d)(8) which counsel for petitioner could find was the 1967 Senate floor debate on amendments to Section 202(d)(8). Every senator who spoke on the proposed amendment referred to the harsh and unfair results of the restrictions on benefits to after-adopted children. Senator Allott, the sponsor of the amendment, referred to the "unyielding and arbitrary fashion in which the bill had been drafted." According to Senator Allott,

> . . . Experience has shown, however, that this concern over the possible abuse of the law with regard to adopted children was never justified, and that this limitation has created undue hardships and difficult circumstances for the bona fide efforts of disabled persons to find some financial assistance from social security after they have adopted children. Arbitrary laws can lead to inequitable and oftentimes absurd results. This has certainly been the experience with this particular provision of the Social Security Act.[15]

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[15] 113 Cong. Rec. 33196 (Nov. 20, 1967). Later in the debate Senator Allott offered the following example to demonstrate the unfairness of the discrimination:

> Frankly, this was brought to my attention by the very unfortunate case of a veteran who became disabled in 1957 and was a quadriplegic, meaning that he has no use of either arms or legs.
>
> He was married in 1964. More than 2 years after that, his adopted child is unable to receive these benefits that natural children rece[illegible].

Ibid., at 33197.

Senator Allott also indicated that budgetary considerations are not a significant reason for the discrimination against adopted children. Although his testimony did not make clear the number of after-adopted children he thought would become eligible for benefits as a result of his amendment, Allott presented evidence from the chief actuary of the Social Security Administration that the cost of extending eligibility to after-adopted children "would be negligible."[16]

Senator Allott's testimony was supported by Senator Dominick, who said,

> I think it would correct inequities which have been in the section up to date. I can foresee and as a matter of fact know, of certain cases where families with both adopted and natural children under these types of circumstances find that they can get benefits for their natural children and cannot get them for adopted children. It does not seem to me that this is equitable or fair.[17]

and by Senator Curtis, who said,

> It so happens that I know of at least two occasions on which, in all good faith, small children have been adopted and a hardship has been worked.[18]

No evidence appears in the legislative history, or anywhere else, that adoptions would be granted contrary to the interests of the children involved, or to the interests of the government if the restrictive provisions of Section 202(d)(8)(D) were removed. To the contrary, the Senate Finance Committee has recently expressed its

[16] *Ibid.*, at 33196.

[17] *Ibid.*, at 33196.

[18] *Ibid.*, at 33197.

belief "that most adoptions are undertaken to obtain for a child the legal and psychological advantages of adoption within a close family group and that it is inappropriate to deprive the child of his social security benefits when he is adopted." Comment on Section 112 of H.R. 1, Report of The Senate Finance Committee on H.R. 1, Sen. Rept. No. 92-1230, 92d Cong., 2d Sess. (Sept. 26, 1972) at 141.

This opinion is buttressed by judicial comment in many of the cases which have reviewed the denial of benefits to after-adopted children in circumstances similar to the circumstances in this case. Opinions discussing the provisions which deny benefits to after-adopted children have frequently reflected their arbitrariness and their failure to have any rational relationship to their purported purpose of preventing abuse. See, *e.g.*, *Gillums* v. *Secretary of Health, Education and Welfare*, 331 F. Supp. 204, 207 (D. Md. 1971) (No evidence of bad motives; "to the contrary, the evidence is admitted to show good faith on the part of the claimant."); *Hagler* v. *Finch*, 451 F.2d 45, 48 (9th Cir. 1971); *cert. den.*, 31 L.Ed.2d 805 (1972) ("Consuela's adoption does not appear to have been motivated by any thoughts of economic gain. The Haglers, lacking guidance through the statutory maze of Section 402(d), have wandered into a trap designed to snare only the undeserving."); *Keys* v. *Richardson*, 325 F. Supp. 459 (E.D. Tenn. 1971) (benefits denied "reluctantly"); *Craig* v. *Finch*, 425 F.2d 1005, 1006 (5th Cir. 1970) ("[C]ase is factually appealing in favor of an award"); *Rowe* v. *Finch*, 427 F.2d 417, 419, n. 3 (4th Cir. 1970) ("We do not mean to suggest that there is any evidence that there was such motivation [to increase the public support available to the family unit] in this case"); *Glaze* v. *Richardson*, 438 F.2d 120 (5th Cir. 1971) ("The District Court viewed this as a deserving case").

Counsel for petitioner has been able to find evidence of only one case in which the sole or primary motivation for seeking the adoption was to increase Social Security benefits for the family unit. In that case, the adoption was *denied by the Court. Gutierrez* v. *New Mexico Dept. of Public Welfare*, 74 N.Mex. 273, 393 P.2d 12 (1964). In its opinion the court cited several cases standing for the principle that an adoption may not legally be granted for a financial purpose alone, in the absence of proof that the adoption would also be in the best interests of the child's emotional and physical well-being. This is not the law solely in New Mexico, but throughout the United States. Adoption law in the United States is summarized as follows at 2 Am. Jur. 2d *Adoption* §61 (1962):

> In determining whether to grant a decree or order for the adoption of a minor child, the interests and welfare of the child are of primary and paramount consideration. *On this point there is unanimous agreement.* Before granting a decree of adoption proceedings, the court must first determine that the best interests of the infant will be served and promoted by the change in status. (Emphasis added.)

In other words, in order to demonstrate the need for a restrictive provision for the purpose of preventing "abuse" through adoptions, Congress would have to have had *some* evidence that the Courts were unable or unwilling to fulfill their paramount statutory duty with respect to adoptions. There was no such evidence.

The fact that a person considers the likelihood that some action he takes will establish eligibility for insurance benefits is not interpreted as abuse with regard to other sections of the Social Security Act. In the case of a man who entered into an employment contract for

the purpose of establishing sufficient quarters to entitle him to benefits, the District Court said in *Rafal* v. *Flemming*, 171 F. Supp. 490, 492 (E.D. Va. 1959),

> It is conceded by all parties that there is nothing improper or questionable about a person entering bona fide employment for the express purpose of acquiring a wage record which will enable him to qualify for an old-age insurance benefit, and that such action is clearly within the spirit, as well as the letter of the law.

The Court said in *Rafal* that the issue was whether there had been bona fide employment. *Accord*, *Foss* v. *Gardner*, 363 F.2d 25, 27 (8th Cir. 1966) (no bona fide employment on the facts, but "the fact that a motive of the claimant was to obtain Social Security benefits would not, standing alone, be fatal to her establishing a claim of employment."); *Cody* v. *Ribicoff*, 289 F.2d 394 (8th Cir. 1961); *Sabbagha* v. *Celebreezze*, 345 F.2d 509 (5th Cir. 1965); *Scott* v. *Celebreezze*, 241 F. Supp. 733 (S.D. N.Y. 1965) (evaluating a transfer of a business and awarding benefits). What holds true for other sections of the Act, must apply as well to adoptions. The mere fact that an adopting parent may have considered the fact that the adoption will increase the amount of the family's benefits does not amount to "abuse" where the adoption is, in other respects, in the best interests of the child. And, as set forth, *supra*, p. 26, the courts must assure that the adoption is, in other respects, in the best interests of the child.

In the case at bar, as with many other similarly situated families, the expectation of child's insurance benefits for the adopted child was not even a factor; for at the time the wage earner took responsibility for the support of Linda Gail, the Act had been interpreted to deny benefits to after-born, adopted children.

The argument that Section 202(d)(8) is necessary to prevent "abuse" in the form of spurious adoptions is reminiscent of the argument that maximum family grants are necessary to keep welfare mothers from having a lot of babies for the purpose of increasing their welfare checks. *Dandridge* v. *Williams*, 397 U.S. 471, *reh. den.* 398 U.S. 914 (1970). Whatever the theoretical merits of this claim with regard to the bearing of children (and it should be noted that this Court did *not* cite this claim as a rational basis for the Maryland maximum grant system), the situation in this case differs markedly from the "family planning" argument. In the first place, Congress, while restricting benefits to after-born adopted children, has provided for benefits to the far more numerous class of after-born natural children. No claim is made that disabled or retired wage earners will conceive more children in order to augment the family's benefit check. And yet if there were to be any concern for abuse, it should rationally be directed at the after-born children. After all, an adoption cannot take place without court supervision, but no court decree is needed to assure that conception and birth will be in the best interests of a child.[19]

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[19]With regard to this argument, it should go without saying that parents who bear *or* adopt a child take on a set of obligations and responsibilities, which may last a lifetime and which will certainly last for many years. These responsibilities involve huge investments of time and emotion, as well as the things money can buy. The assumption is far-fetched that any adopting parents would stand to gain in a transaction where their only recompense would be the modest monthly child's insurance benefit. Senator Allott, the sponsor of the 1967 amendment to Section 202(d)(8), argued that the benefits at stake were too small to invite abuse:

> . . . A benefit of $32.29 per month to help support a child is not going to tempt one to abuse the law in order to adopt a child. Surely the cost of raising a child is more than this, particularly for those disabled persons who sustain so much more in the way of hardship and expense.

Had Congress been genuinely concerned with finding a rational solution to the supposed problem of abuse, they would not have drawn a firm line at the point of the wage earner's qualification for benefits. Even in America, old age, or, in the alternative, death, is predictable. In the coal-mining region of West Virginia where Mr. Morris lives, disability prior to retirement may even be said to be probable, if not predictable, among laboring persons. A family who would adopt a child after the wage-earner had qualified for benefits, for the sole purpose of pecuniary gain in the form of child's insurance benefits, might just as well adopt a child while the wage earner was still working, in anticipation of the fact that the wage earner would soon be qualified for benefits. In fact, the financial security provided by an established Social Security record may be one factor among many considered when grandparents adopt the out-of-wedlock child of their daughter or son. However, such considerations of financial security are at least as likely, probably moreso, to be considered while the wage earner is still working. Yet no one has suggested that children adopted prior to the period of disability should be disqualified from benefits.

As cited above, *supra*, p. 21, the original purpose of the 1960 amendment was to correct a "technical flaw" which had prevented payment of benefits to after-born children of wage earners. But the amendment perpetuates the flaw with respect to after-born, after-adopted children. No presumption of abuse can arise from the fact that a child, later adopted by a wage earner, was not living with the wage earner at the time he or she qualified for

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113 Cong. Rec. 33196 (Nov. 20, 1967). Although the monthly benefit rate has increased somewhat since then, so has the cost of living.

benefits if the child was not born at the designated time. In the case of a child, such as Linda Gail, born several years after the adopting parent qualified for benefits, it is absurd to infer abuse, or even the possibility of abuse, from the fact that the child did not live with the wage earner in the years prior to birth. If the adoption of children like Linda Gail, by parents like Mr. and Mrs. Morris is the kind of "abuse" Congress was trying to prevent,[20] then this Court must conclude that there was no proper governmental purpose to the restriction.

2. *The discrimination against adopted children embodied in Section 202(d)(8) is contrary to the due process clause of the Fifth Amendment to the Constitution of the United States.*

In recent years this Court has dealt several times with the constitutionality of laws which denied benefits to parents or children on the basis of a legal classification of a child. In a series of cases dealing with children born out of wedlock (and therefore classified "illegitimate"), this Court has wrestled with the question of what kinds of legislative distinctions between "legitimate" and "illegitimate" children amount to constitutionally prohibited discrimination. *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968); *Labine* v. *Vincent*, 401 U.S. 532 (1971); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).[21]

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[20]A review of the cases which have challenged the denial of benefits to after-adopted children, indicates that the case at bar is a typical claim.

[21]All of these cases except *Labine* held that there was unconstitutional discrimination, and were decided in favor of the granting of benefits. The *Labine* case was distinguished in the majority opinion of *Weber* on the grounds that:

While all of these cases involved the impact of the Equal Protection Clause of The Fourteenth Amendment upon a state statute, the reasoning of those cases is apposite to the case at bar. Although there is no explicit equal protection guarantee in the Constitution applicable to the federal government, equal protection standards have been imported into the Due Process Clause of the Fifth Amendment. *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Shapiro* v. *Thompson*, 394 U.S. 618, 641-2 (1969); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971).

In *Weber* v. *Aetna Casualty*, *supra*, the most recent of this Court's decisions regarding denial of benefits to children born out of wedlock, Mr. Justice Powell, in the majority opinion, reviewed the reasoning of the Court's decisions, starting with *Levy*.

> The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose. [Citations omitted] Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny. [Citations omitted] The essential inquiry in all the foregoing cases is,

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That decision reflected, in major part, the traditional deference to a State's prerogative to regulate the disposition at death of property within its borders. *Weber*, 31 L.Ed.2d at 776.

This reasoning operates in favor of petitioner in the instant case. As set forth more fully, *infra*, Part II, the federal law here has infringed the State prerogative to regulate matters of domestic relations. *Stanley* v. *Illinois*, 405 U.S. 645, 31 L.Ed.2d 551 (1972), which raises related issues, is considered separately herein.

> however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger? *Weber*, 31 L.Ed.2d at 777.

In applying these principles to the facts of *Weber*, the Court found that the denial of workmen's compensation benefits to unacknowledged illegitimate children of an employee, under certain circumstances, did not substantially promote any legitimate state interest. The Opinion further indicated that a restriction based on the legal classification of a "hapless" child on the basis of his or her "status of birth" was repugnant:

> But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrong-doing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. *Weber*, 31 L.Ed.2d at 779.

Since the decision in *Weber*, at least two three-judge courts have followed the reasoning of that case to hold that a provision in Section 203(a) of the Social Security Act which discriminates against certain illegitimate children by denying them benefits violates the Due Process Clause of The Fifth Amendment. *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn. 1972); *Griffin* v. *Richardson*, 346 F. Supp. 1226 (D. Md. 1972).[22] The provision at issue permitted certain illegitimate children

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[22] *Accord*, *Maracle* v. *Richardson*, 2 CCH Pov. Law Rep. ¶16,137 (Sept. 21, 1972).

to be awarded benefits only if other eligible children of the beneficiary had not exhausted the maximum family allowance.

The illegitimacy cases are relied on here for their reasoning with respect to the constitutional principles involved because there are substantial similarities between discrimination against children born out-of-wedlock and the discrimination involved here against adopted children. While at first glance, the parent-child relationship involved in adoption may appear to be the opposite of the relationship between a child born out-of-wedlock and his or her father, in fact the two are similar kinds of socio-legal classifications. Although difficult to recognize because of our society's assumptions about families, it is essentially a socio-legal classification to call the biological parents of a child the "real" or "actual" parents; such an application could conceivably be given to the adult or adults who in fact provide maintenance, love, and support to the child, regardless of biological relationship. An illegitimate child is so classified and distinguished from other children because of the circumstance that his or her biological parents did not marry.

An adopted child is so classified and distinguished from other children because of the circumstance that his or her biological parents are not the parents who provide him or her with nurturance, support, love and protection.

In the case of most adopted children, as with children born out-of-wedlock, the fact that they have been adopted is completely unrelated to their own choice, fault, action, or—frequently—their knowledge. To penalize a child for the fact that he or she is adopted is frequently as arbitrary and misdirected as to penalize a child for the fact that he or she is born out-of-wedlock.

The government has sought to justify the discrimination involved here by saying that it will provide a safeguard against abuse by adopting *parents.* But as the *Weber* opinion states explicitly, and the other cases about benefits for illegitimate children imply, a discrimination which denies benefits to a child, punishes the child, not the parents. Linda Gail was an infant when she was placed in the home of Mr. and Mrs. Morris. She is no more responsible for the fact that she is adopted than were the plaintiff children in the *Weber* case responsible for the fact that they were born out-of-wedlock. Yet, as in *Weber, Levy, Griffin, Davis,* and the other cases cited, a denial of benefits serves primarily to penalize the child.

The *Weber* case, like the *Griffin* and *Davis* cases, did not involve a restriction of benefits for *all* children born out-of-wedlock. Similarly, Section 202 of The Social Security Act does not deny benefits to *all* adopted children. Nevertheless, in the illegitimacy cases the fact that the plaintiffs had received nothing for the sole reason that they were born out-of-wedlock constituted an unlawful discrimination. Similarly, here, the fact that the Act provides benefits for *some* adopted children does not preclude a finding that *other* children, such as Linda Gail, have been unconstitutionally denied benefits for the sole reason that they are adopted.

The illegitimacy cases provide a framework for analyzing the issues in this case from the point of view of constitutional requirements of equal protection. However, as the Court observed in *Griffin* v. *Richardson,* 346 F. Supp. at 1233,

> An analysis of these cases does not clarify the precise standard to be used in the case at bar.

The opinion in *Weber* leaves open the question of whether the standard for evaluating the classification is

the "strict scrutiny" standard applied when the classification "approach[es] sensitive and fundamental personal rights," or the less stringent standard which requires "that a statutory classification bear some rational relationship to a legitimate state purpose." *Weber*, 31 L.Ed.2d at 777. In the *Weber* opinion, the Court implied that a two-step inquiry should be made in equal protection cases:

> The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger? *Weber*, 31 L.Ed.2d at 777.

As discussed at length, *supra*, Part I(A)(1), the classification does not promote any legitimate state interest. In this case, as in the illegitimacy cases, the child is punished for the supposed wrong-doing of the parents. Furthermore, the fact that a child is adopted, rather than natural born, bears no rational relationship to the issue of whether the child was brought into the family for purposes of abuse (if anything, the required court hearing gives a protection against abuse in adoption which is lacking in cases of natural born children).

In this case, as in the illegitimacy cases, relationship between parent and child is involved. In *Levy* v. *Louisiana*, the Court characterized these rights as involving "the intimate, familial relationship between a child and his own mother." 391 U.S. at 71. Under the law of West Virginia, the adopting parents become the child's "own" parents. The implication of *Levy*, and it was so interpreted by Justice Rehnquist, dissenting in *Weber*, 31 L.Ed.2d at 780-2, was that the intimate family relationships between parent and child were the kind of "fundamental personal rights" which could not be abridged in the absence of compelling state interest.

The statutes denying benefits to illegitimate children denied benefits because conception of a child out of wedlock violates certain social and legal precepts about the family; by contrast, the federal law being challenged here discriminates against adopted children even though the statutes of West Virginia, as well as the other states, promote and protect adoption where it is in the best interests of the child. In this case, as in the illegitimacy cases, the purpose of the statute is to provide support to close relatives and dependents of a wage earner who has lost his capacity to provide support. In this case, the child is as fully and actually dependent on the parent as were the children in the illegitimacy cases, and as the natural after-born children who are granted benefits by the terms of Section 202 of the Act. In this case, the state interest in family relationships is not served by the federal law which conflicts with it (See Part II, *infra*); in the illegitimacy cases, the state interest in family relationships was not served by the state statute which this Court held unconstitutional.

This Court followed a somewhat different line of reasoning in *Stanley* v. *Illinois*, 405 U.S. 645, 31 L.Ed.2d 551 (1972), but one which is applicable to this case. The issue in *Stanley* was cast in terms of whether an irrebuttable presumption of Illinois law violated the Equal Protection Clause. Illinois law provided that children born out of wedlock automatically became wards of the State upon the mother's death; the basis for this was a presumption on the part of the State that unwed fathers are unfit to raise their children. This presumption was irrebuttable prior to the State's taking custody of the children. *Stanley*, 31 L.Ed.2d at 556. This Court held that by categorically denying an unwed father the right to a hearing in which he could demonstrate his

fitness to have custody of his children, even though other parents were granted the right to a hearing before their children were removed from their custody, Illinois deprived Mr. Stanley of the right to due process and equal protection of the laws.

In reaching this conclusion, the Court acknowledged that "due process of law does not require a hearing 'in every conceivable case of governmental impairment of private interest' (citations omitted)." *Stanley*, at 31 L.Ed.2d 558. One reason for finding the requirement of a hearing in this case was that the relationship between parent and child was involved. The Court found a specially protected interest in the relationship of parent and child:

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper*, 336 U.S. 77, 95, 93 L.Ed. 513, 527, 69 S.Ct. 448, 10 ALR 2d 608 (1949) (concurring opinion).
>
> The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," *Meyer* v. *Nebraska*, 262 U.S. 390, 399, 67 L.Ed. 1042, 1045, 43 S.Ct. 625, 29 ALR 1446 (1923), "basic civil rights of man," *Skinner* v. *Oklahoma*, 316 U.S. 535, 541, 86 L.Ed. 1655, 1660, 62 S.Ct. 1110 (1942), and "[r]ights far more precious . . . than property rights," *May* v. *Anderson*, 345 U.S. 528, 533, 97 L.Ed. 1221, 1226,

73 S.Ct. 840 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can either supply nor hinder." *Prince* v. *Massachusetts*, 321 U.S. 158, 166, 88 L.Ed. 645, 652, 64 S.Ct. 438 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer* v. *Nebraska*, *supra*, at 399, 67 L.Ed. at 1045, the Equal Protection Clause of the Fourteenth Amendment, *Skinner* v. *Oklahoma*, *supra*, at 541, 86 L.Ed. at 1660, and the Ninth Amendment, *Griswold* v. *Connecticut*, 381 U.S. 479, 496, 14 L.Ed.2d 510, 522, 85 S.Ct. 1678 (1965) (Goldberg, J., concurring). *Stanley*, 31 L.Ed.2d, at 558-9.

Although not explicitly articulated, a further reason for requiring a hearing in this case was apparently the nature of the issue to be resolved. In *Stanley*, the issue to be resolved was the fitness of a father to provide a good home for his children. In *Bell* v. *Burson*, 402 U.S. 535 (1971), in which a hearing was held to be constitutionally required before suspension of a driver's license, the issue to be resolved was fault in driving. In *Carrington* v. *Rash*, 380 U.S. 89 (1965), the issue was the good faith intention of a serviceman to satisfy the requirements of Texas law as to residency. In *Reed* v. *Reed*, 404 U.S. 71 (1971), the issue was the relative qualification of relatives of the deceased to be appointed administrators of an estate. In each of the foregoing cases, a prior hearing, or its functional equivalent, was held to be constitutionally required. A common thread running through all these cases is the fact that the issue to be resolved involved judgments about individual motivation, individual state of mind or individual capability. The governmental

interests which justified the restriction being challenged in each case depended upon a judgment about individual motivation and circumstance. This kind of judgment could not be made on a categorical basis. Therefore, since fundamental personal rights were at stake, this Court held that an opportunity for a hearing was required by the Due Process Clause.

This case involves an irrebuttable presumption very like the presumptions which were challenged in *Carrington, Reed,* and *Stanley.* The presumption here is that children adopted by a wage earner already receiving disability insurance benefits were adopted for the purposes of abuse unless the adoption happened to meet the fact requirements of Sections 202(d)(8)(D) or (E).

In this case, as in *Stanley,* the specially protected area of relationships between parent and child is involved. As argued more fully above, adopted children are equally entitled with biological children to protection of the relationship with their parents. The fact that most of our family relationships are based on biological kinship is a socio-legal choice of this society. However, recognition of adoption is so firmly entrenched in our laws and in our custom that it cannot be argued that the protected sphere of family relationships is limited to biological kinship. Adopted children too are entitled to share in the special deference given to parent-child relationships.

As in *Stanley, Carrington, Reed,* and *Bell* v. *Burson,* the central issue involves a question of individual motivation. The government justifies denying benefits to Linda Gail and other similarly situated children by presuming that all those children were adopted for purposes of abuse. As explained at length, *supra,* Pt. I(A)(1), this is an unwarranted presumption in most

cases. In every case, motivations are imputed to families without any meaningful opportunity for the family to rebut them.

At least in *Stanley* the father was given an opportunity at some point to prove his fitness as a father by petitioning for custody of his children. The defect in the Illinois procedure was that he should have had the chance for a hearing before ever losing custody. The irrebuttable presumption in the instant case is more like the presumptions in *Carrington* and *Reed.* Here there is no opportunity at any point for the wage earner or child to rebut the presumption that the adoption was for purposes of abuse and thereby qualify for benefits.

B. The Requirement of Supervision by a Child-Placement Agency, When Interpreted To Exclude a Juvenile Court, Denies Certain Adopted Children Like Linda Gail Due Process of Law.

Linda Gail was denied benefits, not because of any legal impediment to her adoption, but because the adoption was not supervised by a child-placement agency. (App. 40, 44-45) Most of the reasons elaborated in Part I(A)(1), *supra,* showing that the discrimination against adopted children is not rationally related to any legitimate governmental purpose, apply equally to the arguments concerning supervision by a child-placement agency. To the reasons listed there, the following reasons may be added to demonstrate that the requirement of supervision by a child-placement agency is not rationally related to any legitimate governmental purpose:

1. The requirement is completely superfluous. Before any adoption may be granted in West Virginia, as well as in other states, the Court must specifically find that the adoption will be in the best interests of the child. Section 48-4-3, West Virginia Code (Michie's 1966). At the time of the adoption in this case, the Court was required to appoint a discreet and suitable person to investigate the merits of the adoption and report to him in writing. Section 48-4-3, West Virginia Code (Michie's 1966). The requirement that a separate child-placement agency investigate the very matters upon which the Court must rule is an insult to the juvenile judges of this county; it is based on a totally unwarranted assumption that the courts will generally not do their job. The argument of expertise does not militate in favor of independent and duplicative supervision by a child-placement agency. Certainly juvenile court judges have as much experience in the area of problems of juvenile placements as do most social services agencies. Furthermore, most judges have much longer tenure in their jobs, and more years of experience than the social workers who staff most public and private child-placement agencies. This is particularly true for rural counties, such as petitioner's home county, where the only child-placement agency is the Department of Welfare (App. 34, 55), where case workers frequently lack social work training, and where staff turnover is high.

2. Supervision by the Department of Welfare is inappropriate or burdensome in many cases. Particularly in rural areas where it is likely to be one of the only agencies available to meet a broad range of social problems, the Department of Welfare is typically overworked and understaffed. Petitioner concedes that the Department of Welfare does serve as a public

child-placement agency in some adoptions. These are adoptions where the Department has been granted custody. Section 49-3-1, West Virginia Code (Michie's 1966). However, as the opinion of the Court of Appeals states, the child would have to be "relinquished" to the custody of the Department of Welfare. (App. 55) This is a completely unnecessary step in the case of intra-family adoptions, such as the one involved in this case, and in many others where benefits have been denied. Furthermore, the requirement of Welfare Department involvement in intra-family adoptions is a wholly unnecessary burden for local Welfare Departments, which are already overburdened with high caseloads of people genuinely in need of state involvement and supervision. Chances are that Welfare Department supervision would be extremely cursory in any event in most intra-family adoptions. Furthermore, many families will be extremely reluctant to "relinquish" their children to the Welfare Department because of the opprobrium associated with Welfare Department custody on account of the Department's frequent involvement in neglect and abuse cases, and because of fear that the child would not be returned to the family.

The adoption of Linda Gail occurred over a year before the 1967 Amendments, which added the requirements of supervision by a child-placement agency. Thus Mr. and Mrs. Morris had absolutely no reason to consider the unwieldy procedure of seeking Welfare Department supervision of the adoption. Yet the Act creates the presumption as to them, equally with persons who had notice of the requirement, that the adoption was for purposes of abuse. Even after the passage of the 1967 amendment, many families proceeded with adoptions without child-placement agency supervision

because their attorneys were ignorant of the requirement, or misunderstood it. The requirement of child-placement agency supervision has received little publicity, and many attorneys have learned about it only *after* a client failed to qualify for child's insurance benefits. For these families, too, the presumption of abuse, simply because they failed to seek child-placement agency supervision, is unreasonable.

The constitutional principles of due process and equal protection discussed at Part I(A)(2), *supra*, are applicable to the requirement of child-placement agency supervision, and will not be repeated here.

For the reasons already discussed, the denial of benefits to after-adopted children on the grounds that the adoption was not supervised by a child-placement agency denies these children the equal protection of the law and rights to due process guaranteed by the Fifth Amendment to the Constitution of the United States.

II.

BY DISCRIMINATING BETWEEN ADOPTED CHILDREN AND NATURAL CHILDREN AND BY CREATING AN ON-GOING LEGAL RELATIONSHIP BETWEEN AN ADOPTED CHILD AND HIS NATURAL PARENT WHICH CONTINUES AFTER THE ADOPTION, THE FEDERAL GOVERNMENT ARBITRARILY AND UNCONSTITUTIONALLY INTERFERES WITH WEST VIRGINIA'S LAWS GOVERNING ADOPTION.

The legislature of West Virginia, like the legislatures of other states, has taken great pains to assure by its statutory scheme that adopted children will stand in *every legal respect* in the same relationship to their adopting parents as natural legitimate children of the

same parents. Among the elements of this statutory scheme are careful and elaborate provisions for nondisclosure of the fact that a child is an adopted, rather than a natural child;[23] provision for changing the name of the child in the adoption decree;[24] provision for mandatory issuance of a new birth certificate;[25] complete substitution of reciprocal rights of inheritance from the adopting parents for reciprocal rights of inheritance from the natural parents;[26] and complete transfer of the duty of support and maintenance from the natural parents to the adopting parents. Section 48-4-5 of the West Virginia Code (Michie's 1966), *as amended* (Supp. 1972) summarizes this complete transfer of rights and duties as follows:

> Upon the entry of such order of adoption, the natural parent or parents . . . shall be divested of all legal rights, including the right of inheritance from

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[23]Section 48-4-4, West Virginia Code (Michie's 1966), *as amended* (Supp. 1972); Section 16-5-18, West Virginia Code (Michie's 1972). See also 2 Am. Jur. 2d, Adoption §88 (1962): ". . . the tendency of modern legislation is to place an adopted child as far as possible and to all intents and purposes, in the same position as a natural child."

[24]Section 48-4-3, West Virginia Code (Michie's 1966), *as amended* (Supp. 1972).

[25]Sections 16-5-16 and 16-5-18, West Virginia Code (Michie's 1972); Section 48-4-4, West Virginia Code (Michie's 1966), *as amended* (Supp. 1972).

[26]Section 48-4-5, West Virginia Code (Michie's 1966), *as amended*, (Supp. 1972). West Virginia law follows the pattern of modern adoption statutes which terminate "absolutely all legal relations between the adopted child and his natural parents . . .," and substitute for these full legal rights and responsibilities of parent and child between the adopted child and his adopting parents, 2 Am. Jur. 2d, Adoption §83, 87 (1962).

> or through the adopted child, under the statutes of descent and distribution of this State, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such parent or parents. From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.

That section echoes the requirements of Section 48-4-3 that the adoption order shall state that

> . . . from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and his or her parents, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article.[27]

In addition, in West Virginia law, adoptions are irrevocable except under certain unusual circumstances.[28]

The Social Security Act, as amended at the time of the application for benefits in this case, and, as further

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[27]Section 48-4-3, West Virginia Code (Michie's 1966), *as amended* (Supp. 1972). The only exceptions in the article pertain to revocation of an adoption under certain unusual circumstances.

[28]Section 48-4-6, West Virginia Code (Michie's 1966), *as amended* (Supp. 1972).

amended by the Social Security Amendments of 1972, interferes and conflicts with West Virginia's statutory scheme of adoption in at least three respects:

1. By distinguishing between adopted children and natural children of the wage earner, Section 202(d)(8) of the Act jeopardizes, and, in fact, directly violates the provisions of West Virginia law which protect against disclosure of the fact that a child is adopted unless the natural, or the adopting parents themselves choose to make this disclosure.

2. By providing that an adopted child may continue to draw such benefits, if any, as he or she was entitled to as the dependent child of his or her natural parents, Section 202(d)(1) of the Act resuscitates a legal and financial relationship with the natural parent which West Virginia law explicitly terminates.

3. By failing to treat an adopted child of a disabled wage earner "to all intents and for all purposes [as] the legitimate issue of the person or persons so adopting him," as mandated by Sections 48-4-4 and 48-4-5 of the West Virginia Code, as amended. Section 202(d)(8) of the Act denies benefits to after-born children in violation of West Virginia law.

As demonstrated above, Part I, no rational reason exists for these interferences with the state's plan for relationships between parents and their adopted children. Certainly no issue of commerce, of protected rights, of due process exists. No issue of conflict of laws or full faith and credit exists such as justified this Court's intervention in the area of domestic relations in *Williams* v. *North Carolina*, 317 U.S. 287 (1942). Congress could have provided for adopted children to be treated the same as natural children of their adopting parents, as of

the date of the adoption decree, thus keeping the Social Security Act consistent with State law. Or, Congress could have left the matter open-ended, as they have elsewhere in the Social Security Act, to be determined in a manner which is consistent with each State's domestic relations law or intestacy law.[29]

It is, of course, established without doubt that Congress has the power to set up a national social insurance system. It is, however, even more firmly established, that the powers of the federal government are limited powers, and that the federal government may not, without explicit Constitutional authority, interfere with a State's law-making authority.

When a State's sovereignty is to be infringed by the federal powers, particularly in an area such as adoption which has always in this country been a matter of plenary state power, some good reason for this infringement arising from a power enumerated in the U.S. Constitution must appear.[30] Here, no good reasons appear; the purposes of the Act would be served as well, or better, by a rule treating alike similarly situated natural and adopted children of insured wage earners. Where no constitutionally based reason exists for an interference with State sovereignty, the Constitution forbids the interference.

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[29]See, *e.g.*, 42 U.S.C. §416(h)(2)(A).

[30]Compare, in this regard, the Court's reasoning in *Labine* v. *Vincent*, 401 U.S. 532 (1972), one of the illegitimacy cases relied on above, Pt. I(A)(2). In that case, the Court upheld a Louisiana intestacy law in major part because of "the traditional deference to a State's prerogative to regulate the disposition at death of property within its borders," as reviewed in *Weber* v. *Aetna Casualty & Surety Co.*, 31 L.Ed.2d 768, 776 (1972).

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III.

SINCE LINDA GAIL SATISFIED ALL THE REQUIREMENTS OF SECTIONS 202(d)(1) AND 202(d)(3) TO QUALIFY FOR BENEFITS, SHE SHOULD NOT BE BARRED FROM BENEFITS BY THE PROVISIONS OF SECTION 202(d)(8).

In his decisions, the hearing examiner explained he was of the opinion that Linda Gail had qualified for benefits because she had complied with all the requirements of Sections 202(d)(1) and 202(d)(3), which contain no provisions excepting or excluding adopted children from their terms. Linda Gail had filed an application for benefits [Section 202(d)(1)(A)]; was unmarried and under the age of eighteen [Section 202(d)(1)(B)]; and was dependent upon a disabled wage earner at the time of the filing of her application for benefits [Section 202(d)(1)(C)]. By the terms of Section 202(d)(1), a child who meets these requirements "*shall* be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits . . ." (emphasis added). In case there should be any questions about whether an adopted child is dependent upon the adopting parent for the purposes of Section (d)(1)(C), Section (d)(3) provides that "A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and–(A) such child is neither the legitimate nor adopted child of such individual, or . . ." Linda Gail meets this requirement since she was living with Mr. and Ms. Morris at the time of her application for benefits, and was their adopted child.

Section 202(d)(1) is written in manadatory terms: a child who meets the requirements set forth therein *shall* be entitled to benefits. Linda Gail met all the requirements. Therefore, reasoned the hearing officer, she should be entitled to benefits. (App. 18-19, 37-38)

The hearing officer reasoned that, since the provisions of Section (d)(8) were in direct conflict with the provisions of Sections (d)(1) and (d)(3), he should resolve the contradiction by following the rule of statutory construction that the Social Security Act is to be construed liberally in favor of the granting of benefits. (App. 19)

The purpose for providing child's insurance benefits in the Social Security Act was to provide a means of support to the dependent children of a wage earner if the wage earner was unfortunate enough to become disabled and unable to support them himself. The purpose of the disability insurance program was to provide an income to the families of disabled wage earners so that they could participate modestly, but fully, in American life. There was no intention on the part of Congress to restrict disability insurance beneficiaries, as a condition of eligibility, from rights and activities open to other citizens, such as the adoption of children. Yet, that is the effect of a restrictive interpretation of Section 202(d)(8). The purpose of the 1960 Amendments to Section 202 of the Social Security Act was to correct the inequities of the earlier provisions of the Act which had denied benefits to after-born natural *and* adopted children. Sen. Rept. No. 1856 (Aug. 19, 1960), *supra*, p. 19. Yet, a restrictive interpretation of Section 202(d)(8) perpetuates the inequities with respect to adopted children.

The rule of liberal construction "is that by which the letter of the statute is enlarged or restricted so as more effectually to accomplish the purpose intended." 3 Sutherland, Statutory Construction (3rd ed.) §5504, p. 39. According to Sutherland, the construction given to a section of a statute should be the construction most consistent with the overall purposes of the statute.

Here, where there is a direct conflict between the terms of one section of the statute and another section, the section which is consistent with the purposes of the Act and with coverage should be adopted.

IV.

SECTION 404.323 OF SOCIAL SECURITY REGULATION NO. 4 IS AN ARBITRARILY RESTRICTIVE INTERPRETATION OF THE MEANING OF "CHILD-PLACEMENT AGENCY" IN SECTION 202(d)(8)(E) OF THE SOCIAL SECURITY ACT.

The legislative history of Section (d)(8)(E), which permits payment of child's insurance benefits to after-adopted children if the adoption was supervised by a child-placement agency, clearly indicates that this section was intended to be a remedial measure. The quotations from the floor debate, *supra*, pp. 23 and 24, accurately represent the tenor of the comments of the amendment's sponsors and supporters. (No one spoke in opposition to the amendment.) 113 Cong. Rec. 33196-7 (Nov. 20, 1967). Senator Allott was concerned that assistance be given to "a small, definable group of disabled individuals who need our help," for good faith adoptions by residents of the United States. 113 Cong. Rec. 33196.

Very little attention was given in the floor debate to the pros and cons of the particular mechanism suggested by Senator Allott's amendment, supervision by a child-placement agency. There was considerable expression of desire for a mechanism to separate the "worthy" or "good faith" cases from the cases of abuse, but little consideration of how and whether supervision by a child-placement agency would accomplish this end. Other than using the words "supervision of a public or private child placement agency," Senator Allott did not specify what agencies he did or did not have in mind.

The Hearing Officer took the position that the juvenile court could and should be considered a child-placement agency as used in Section 202(d)(8)(E). The primary function of the juvenile court, observed the hearing officer, was *placement*, "whether the subject be a juvenile delinquent, or a neglected or dependent child." (App. 38) In his earlier opinion, the hearing officer noted that

> one of the principal functions of [the juvenile court] is the "placement" of children in various appropriate environmental settings, including temporary and permanent custody, in foster homes, etc.
>
> In respect to the jurisdiction of juvenile courts in West Virginia—as is the case of most other states—such court takes full supervisory authority over the child, often placing him in a foster home (the adults therein sometimes being prospective adoptive parents); under the immediate supervision and/or custody of a suitable individual; or in some other environmental setting deemed to be in the best interests of the child. In a truly literal sense then, the court, a public entity, is extensively involved in *child placement*, proper environmental

placement being one of the prime functions of such a court in our modern society under the doctrine of *parens patriae* (i.e., the State acting in place of the parents). It is noteworthy that the *1966 Official Code of West Virginia,* Chapter 49, Article 5, Section 4, provides that "A person under the age of 18 years who appears before the juvenile court *in any capacity* shall be deemed to be a ward of the court and, protected accordingly * * *" (emphasis added). (App. 20-21)

It is a tenet of statutory construction that

> If upon examination the general meaning and object of the statute is inconsistent with the literal import of any clause or section, such clause or section must, if possible, be construed according to that purpose. 3 Sutherland, Statutory Construction (3rd ed.) §7210, p. 438.

"Child-placement agency" should be defined to include a juvenile court to avoid the constitutional issues cited earlier in this brief and to provide a fair and reasonable way for the original remedial purposes of the enactment of Section (d)(8)(E) to be realized.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court below should be reversed and that Linda Gail Morris should be awarded child's insurance benefits, or, in the alternative, that she be awarded benefits provided that, at a fair and suitable hearing, petitioner demonstrates that she was not adopted for purposes of abuse.

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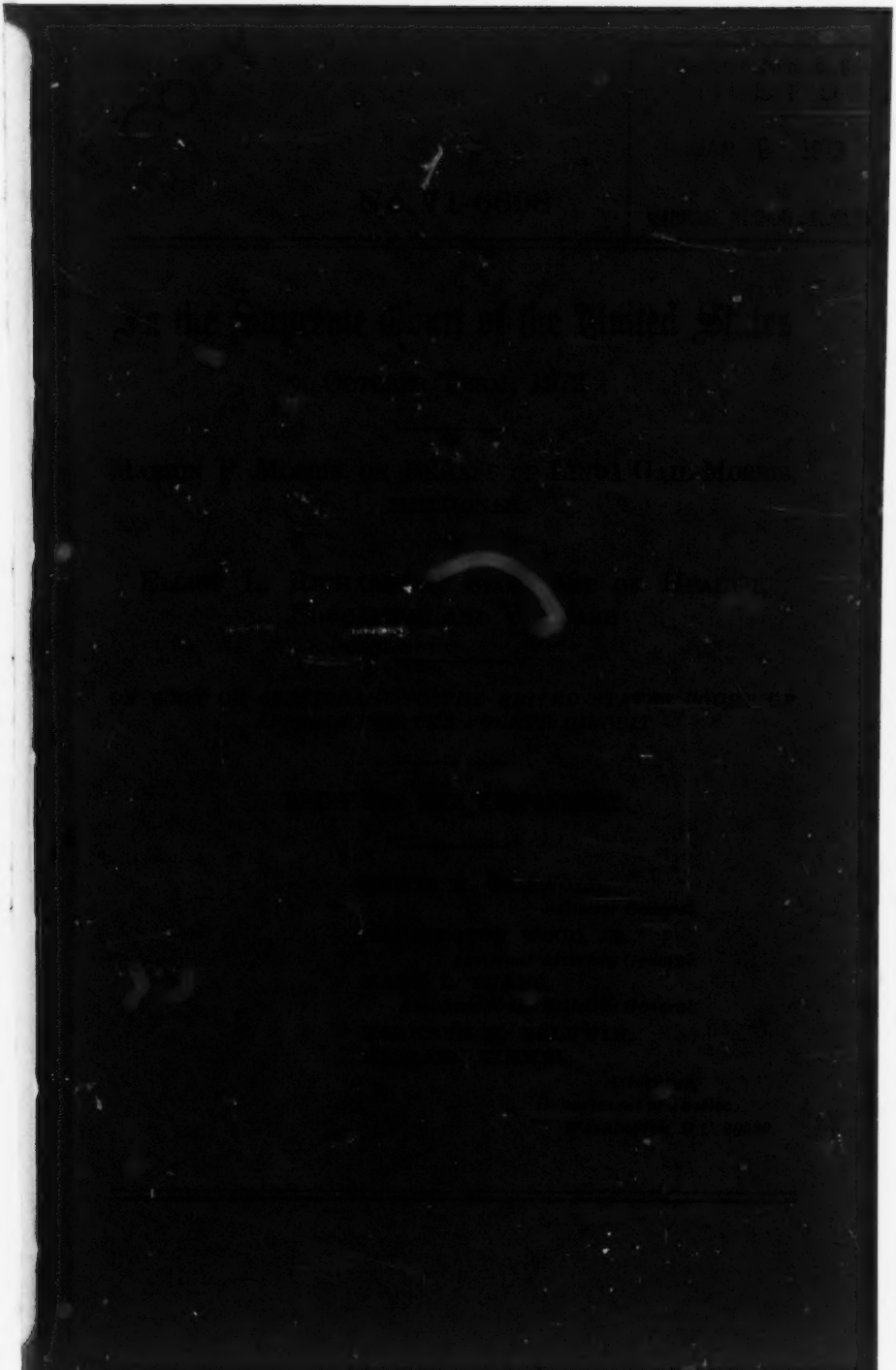

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-6698

MARION P. MORRIS, ON BEHALF OF LINDA GAIL MORRIS, PETITIONER

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (App. 52–56) is reported at 445 F. 2d 775. The opinion of the district court (App. 46–49) is reported at 335 F. Supp. 1178.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 1972 (App. 57). A timely petition for rehearing was denied on February 22, 1972 (App. 58). The petition for a writ of certiorari was filed on May

20, 1972, and was granted on October 10, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the writ of certiorari should be dismissed as improvidently granted because the provisions of Section 202(d)(8)(E) of the Social Security Act have been repealed since the granting of the petition for certiorari.

2. Whether former Section 202(d)(8)(E) of the Act—which provided that a child adopted by a disability beneficiary after he became entitled to disability benefits would not be entitled to child's insurance benefits unless the adoption was supervised by a child-placement agency—violated the due process clause of the Fifth Amendment.

3. Whether a regulation of the Social Security Administration that implemented former Section 202(d)(8)(E) by specifying that the term "child placement agency" did not include courts, was valid.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 202(d)(1) and (d)(8) of the Social Security Act, and of 20 C.F.R. 404.323(c), are set forth in the Appendix hereto, *infra*, pp. 29–32.

STATEMENT

Petitioner brought this action in the district court on behalf of his adopted granddaughter, Linda Gail Morris, to review the final decision of the Secretary of Health, Education, and Welfare denying child's insurance benefits. Benefits were denied on the ground that the conditions of Section 202(d)(8)(E)(i) of

the Social Security Act, 42 U.S.C. 402(d)(8)(E)(i), requiring supervision of Linda's adoption by a child-placement agency, had not been met.

1. *Events prior to the enactment of Section 202(d)(8)(E).*—Petitioner was born in November 1905 and became entitled to receive Social Security disability benefits in 1957 (Tr. 53, 100; App. 3, 27).[1] His granddaughter was born on March 7, 1965, the child of his daughter Rosemary Morris and Paul Ray Kinder (Tr. 54, 90, 105; App. 4–5, 6, 28). She was taken into the home of her grandparents during her first year and has been living with and receiving her support from them since that time (Tr. 54, 55; App. 28, 29). The Morris family lives near Whitesville, in Raleigh County, West Virginia, close to the Boone County line (Tr. 60, 67; App. 29, 32).

On October 13, 1966, when Linda was one and one-half years old, her grandparents filed in the Criminal Court of Raleigh County (acting as the Juvenile Court of Raleigh County) [2] a petition for her adoption (Tr. 104; App. 4). After a hearing held the same day, and upon consideration of the favorable recommendation of the town policeman (who at the court's direc-

[1] See Section 223 of the Social Security Act, 42 U.S.C. 423. Petitioner's period of disability began September 30, 1953 (Tr. 100; App. 3).

"Tr." refers to the Social Security administrative transcript, which is part of the record in this case. "App." refers to the printed appendix to petitioner's brief filed in this Court.

[2] See Tr. 48. The criminal court of a county in West Virginia is granted juvenile jurisdiction under W. Va. Code § 49–5–1 (Michie 1966). See also W. Va. Code §§ 49–5–5, 48–4–3, and 48–4–8 (Michie 1966).

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tion had made an investigation), the court formally decreed the adoption (Tr. 104–106; App. 4–5).

On October 22, 1966, petitioner filed an application for child's insurance benefits (Tr. 80–83). At that time the Social Security Act limited the payment of child's insurance benefits for "after-adopted" children[3] of disability beneficiaries to cases where the adoption had been decreed within two years of the wage earner's disability entitlement. Section 202(d)(8)(D) of the Act, 42 U.S.C. 402(d)(8)(D).[4] Because Linda did not qualify for benefits under this provision, the application was denied (Tr. 84, 87–89).

2. *Events after the enactment of Section 202(d)(8)(E).*—On January 2, 1968, the President signed into law the Social Security Amendments of 1967, 81 Stat. 821, which extended benefits to *all* after-adopted children of disability beneficiaries, regardless of when the adoption took place, so long as it "took place under the supervision of a public or private child placement agency," and was "decreed by a court of competent jurisdiction."[5] Section 202(d)(8)(E) of the Social Security Act, 42 U.S.C. 402(d)(8)(E).

On February 28, 1968, petitioner submitted a second application for child's insurance benefits (Tr. 90–93; App. 6–9). This application was denied (Tr. 94, 97–

[3] We use the term "after-adopted" to refer to children adopted by a disability or old-age beneficiary *after* he became entitled to benefits.

[4] At that time, this provision was Section 202(d)(9)(D), 42 U.S.C. 402(d)(9)(D) (1964 ed., Supp. I). See note 19, *infra*.

[5] Pub. L. 90–248, § 112(a), 81 Stat. 838–839.

99) because Linda's adoption had not been supervised by a public or private child-placement agency.

Thereafter, petitioner requested a hearing (Tr. 32–33). The hearing examiner, without taking further evidence, rendered a decision favorable to petitioner (Tr. 21–29; App. 11–22), on the basis that the court which decreed Linda's adoption "is substantially within the ambit of a generic definition of 'public child placement agency'" (Tr. 28; App. 21).[6] The Appeals Council *sua sponte* reviewed this decision and remanded the case to the hearing examiner to hold a hearing (Tr. 18; App. 23).

The hearing examiner, after an evidentiary hearing (Tr. 41–79), issued a revised decision reiterating his prior rulings (Tr. 11–13; App. 36–39). Included in the record was a letter from the Raleigh County judge who had decreed the adoption, stating that Raleigh County "does not have a public or private placement center or agency for children" (Tr. 113; App. 34). The hearing examiner reasoned that where no "orthodox type of child placement agency" is available, the decreeing court must be deemed a child-placement agency "if invidious discrimination is to be avoided" (Tr. 13; App. 38).

The Appeals Council reversed, denying benefits on the authority of the applicable Social Security Administration regulation (pp. 31–32, *infra*) which, in defining "public child-placement agency," states that "[t]he

[6] The hearing examiner also ruled that child's insurance benefits should be paid under Sections 202(d)(1) and 202(d)(3) of the Act, notwithstanding the provisions of Section 202(d)(8) (Tr. 26–27; App. 18–19).

term does not include a court" (Tr. 6; App. 44).[7] This decision of the Appeals Council became the final decision of the Secretary under Section 205(g) of the Act, 42 U.S.C. 405(g). See 20 C.F.R. 404.951.

Petitioner then brought this action. The district court reversed the decision of the Secretary and ordered that child's insurance benefits be granted (App. 46–51). Noting that under West Virginia law[8] an adoption "must take place in the county wherein those adopting reside" and that Raleigh County "does not, or at least at that time, did not, have a public or private placement center or agency for children,"[9] the court concluded that Linda could never have qualified for benefits (App. 48). It held that the applicable regulation, "as applied by the Secretary to the facts in this case, is arbitrary, restrictive, unjust and invalid" (App. 48).

The court of appeals (with one judge dissenting) reversed (App. 52–56). It held that the Administration's regulation validly implemented the statutory objective, and that, since the adoption could have been supervised by the West Virginia State Department of Welfare, the statutory and regulatory requirements could have been met. Accordingly, those requirements

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[7] The Appeals Council also rejected the hearing examiner's alternative conclusion that benefits must be paid under Sections 202(d)(1) and (3) without regard to the limiting provisions of Section 202(d)(8) (Tr. 5; App. 41–42). See note 6, *supra*.

[8] W. Va. Code § 48-4-1 (Michie 1966).

[9] The court did not expressly consider the Secretary's contention (Brief in Support of Motion for Summary Judgment, pp. 9–10) that the adoption could have been supervised by an outside child-placement agency.

ıld not be said to discriminate unlawfully against
opted children in Raleigh County (App. 55).

3. *Repeal of Section 202(d)(8)(E).*—On October
1972, three weeks after this Court granted cer-
rari in this case, the Social Security Amendments
1972 became law (Pub. L. 92–603, 86 Stat. 1329).
ction 111(a) of those Amendments deleted the
mer provisions of Section 202(d)(8) with respect
"after-adopted" children of disability beneficiaries
cluding the requirement for child-placement agency
ervision) and substituted a new Section 202(d)
. Under the new provisions a child adopted by a
ge earner after the latter becomes entitled to dis-
lity benefits is entitled to child's insurance benefits
y if he was both living with and receiving one-
f of his support from the wage earner for the en-
year prior to the entitlement of the wage earner.[10]
here is also a provision for a child born during
one-year period.) The amended statute is de-
ned to ensure that benefits are paid only if the
pted child actually lost a source of support when
wage earner became disabled. S. Rep. No. 92–1230,
Cong., 2d Sess., p. 141; H. Rep. No. 92–231, 92d
g., 1st Sess., p. 52.

SUMMARY OF ARGUMENT

I

fter certiorari was granted in this case, Congress
sed, and the President signed, the Social Security

[10] It thus appears that petitioner's adopted granddaughter, who did not reside with petitioner until some eight years after the disability entitlement, would not quality for benefits under the new Section 202(d)(8).

Amendments of 1972. The Amendments repealed the provisions of the Social Security Act whose constitutionality this Court granted certiorari to consider; they substituted new requirements different from those superseded. The issues in this case are therefore no longer important, and the writ of certiorari should accordingly be dismissed as improvidently granted.

II

Under the standard for reviewing the constitutionality of a Social Security Act classification—*i.e.*, whether it is reasonably related to the achievement of a proper governmental purpose—the statute in issue here is consistent with the due process clause of the Fifth Amendment.

A. The Social Security Act provides for child's insurance benefits for the dependent children of disabled or retired wage earners. The historical development of benefits for children adopted after the parent had become entitled to benefits suggests a consistent congressional concern that the promise of child's benefits not invite abuse through adoptions solely for the purpose of economic gain. In keeping with that objective, Congress provided in 1968 that such benefits would be available regardless of when the child was adopted, if the adoption were supervised by a child-placement agency and decreed by a court.

These conditions were reasonably related to the achievement of the legislative goal. Congress could reasonably determine that the two-fold safeguard of a judicial decree and independent professional supervision would provide the necessary assurance that the

adoption was in the child's best interest; it could properly conclude also that either safeguard alone would not be sufficient. While there is no question here as to the *bona fides* of petitioner's adoption of his granddaughter, Congress is free "to legislate generally, unlimited by proof of the existence of the evils in each particular situation." *North American Co.* v. *Securities and Exchange Commission*, 327 U.S. 686, 710–711.

B. The statute did not invidiously discriminate against adopted children, and this Court's recent decisions in *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, and *Stanley* v. *Illinois*, 405 U.S. 645, do not require that the provisions be struck down. In *Weber* the denial of workmen's compensation benefits to unacknowledged illegitimate children was not reasonably related either to the stated objective of protecting legitimate family relationships or to the recognized purposes of workmen's compensation laws. The statute was, rather, a manifestation of a pattern of state discrimination against illegitimate children. The classification here, however, was reasonably related to the goal of avoiding abuse, and there is no comparable pattern of discrimination.

In *Stanley* the statute was struck down because it permitted the State to take a child from his unmarried father without a hearing and without proof of neglect. The State's interest in that procedure could not outweigh the father's fundamental interest in his own children. Here, the only interest is an economic one, and Congress may make rough accommoda-

tions in solving practical problems relating to economic benefits.

C. The provisions did not unconstitutionally discriminate against residents of counties without local child-placement agencies. Congress could properly condition economic benefits on the use of a child-placement agency even if some persons have no access to such an agency. But this record does not indicate that child-placement services were unavailable to petitioner. It indicates only that he could not foresee the subsequently enacted requirement.

III

The Social Security Administration's regulation—which defines "child-placement agency" to exclude courts and court-appointed investigators—is valid. It is consistent with the statutory purpose and legislative history, which indicate that Congress intended the dual assurance of a judicial decree and professional supervision.

ARGUMENT

I

THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED BECAUSE, AS A RESULT OF THE REPEAL OF SECTION 202(d)(8)(E) AFTER THE PETITION FOR CERTIORARI WAS GRANTED, THE ISSUES IN THIS CASE ARE NO LONGER IMPORTANT

The petition for certiorari was granted in this case to consider the constitutionality of the provision of the Social Security Act and implementing regulations that limit child's insurance benefits for children adopted by a disability beneficiary after he became entitled to disability benefits to situations where the

adoption was supervised by a child-placement agency. After the petition was granted, however, Congress repealed those provisions and substituted for them the requirement that the child must have resided with and received more than half of its support from the wage earner during the year before the latter became entitled to disability benefits. For the future, therefore, it will be irrelevant, in deciding applications for child's insurance benefits for adopted children, whether the adoption was supervised by a child placement agency.[11]

To our knowledge, there are no other pending court cases involving the issue. The validity of the superseded provision can affect the payment of benefits only to the narrow class of children who were adopted after the wage earner qualified for benefits and on whose behalf applications were filed between 1968 and 1972. The issues in this case, therefore, are no longer of continuing importance. Had Section 202(d)(8)(E) been superseded by the new legislation at the time the petition for certiorari was pending, the case "would hardly have been brought here in the first instance." *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 76–77.

In these circumstances, the Court's customary practice is to dismiss the writ of certiorari as improvidently granted. In the *Rice* case, *supra*, the Court so dismissed the writ because a state statute, enacted after the litigation had commenced, barred "the ulti-

[11] Petitioner's adopted grandchild apparently would not qualify for benefits under the amended statute. See note 10, *supra*.

mate question presented in this case from again arising in that State" (349 U.S. at 73). Cf. *District of Columbia* v. *Sweeney*, 310 U.S. 631, where certiorari was denied "in view of the fact that the tax is laid under a statute which has been repealed and the question is therefore not of public importance."[12]

II

FORMER SECTION 202(D)(8)(E) IS RATIONALLY BASED AND FREE OF INVIDIOUS DISCRIMINATION

Although the Fifth Amendment has no equal protection clause, discrimination may be "so unjustifiable as to be violative of due process." *Bolling* v. *Sharpe*,

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[12] The Court's refusal to dismiss the writ as improvidently granted in *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 417–418, n. 21, does not call for a similar result in this case. *Jones* was a private suit under 42 U.S.C. 1982 for injunctive and other relief based on a private, racially-motivated refusal to sell real property. The issue was whether Section 1982 applied to private as well as state action. After oral argument in the case, the Civil Rights Act of 1968 was signed into law. Although Title VIII of the Act would apply in some instances of private refusals to sell, it did not repeal or supersede Section 1982. The Court detailed "the vast differences between, on the one hand, a general statute applicable only to racial discrimination in the rental and sale of property and enforceable only by private parties acting on their own initiative, and, on the other hand, a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority" (392 U.S. at 417).

Here, by contrast, the superseding provisions of Section 202(d)(8) eliminated the legislative classification that petitioner challenges and covers the same subject matter as the former provisions.

347 U.S. 497, 499; *Schneider* v. *Rusk*, 377 U.S. 163, 168; *Shapiro* v. *Thompson*, 394 U.S. 618, 642. In statutes dealing with economic benefits, a legislative classification must be upheld "'if any state of facts reasonably may be conceived to justify it'." *Dandridge* v. *Williams*, 397 U.S. 471, 485; see also *Richardson* v. *Belcher*, 404 U.S. 78, 81; *Jefferson* v. *Hackney*, 406 U.S. 535, 546; *McGowan* v. *Maryland*, 366 U.S. 420, 426. A classification is constitutionally infirm only if it is "patently arbitrary" and bears no rational relationship to the objective sought to be advanced by the statute. *Flemming* v. *Nestor*, 363 U.S. 603, 611; *Reed* v. *Reed*, 404 U.S. 71, 76.

Just last Term, in *Richardson* v. *Belcher*, *supra*, this Court reaffirmed the principle that a Social Security Act classification is consistent with equal protection and due process if it is "'rationally based and free from invidious discrimination'" (404 U.S. at 81).[13] Emphasizing its "limited function under the Constitution" in this type of case, the Court summarized the governing standard as follows (404 U.S. at 84):

> If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

Former Section 202(d)(8)(E) met these requirements.

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[13] The Court in *Belcher* upheld the provisions of Section 224, 42 U.S.C. 424a, which require a reduction in disability benefits to reflect workmen's compensation payments.

A. THE PROVISIONS WERE REASONABLY DESIGNED TO MINIMIZE THE POSSIBILITY OF ABUSE THROUGH ADOPTION OF CHILDREN SOLELY TO QUALIFY THEM FOR BENEFITS

Child's insurance benefits are payable to the dependent minor children of a wage earner if the wage earner becomes disabled, retires, or dies.[14] Prior to 1960 the Act did not provide child's insurance benefits for a wage earner's children born or adopted after he became disabled.[15] In that year, the law was changed to provide benefits for "after-born" children of disability beneficiaries,[16] because Congress concluded there was no reason to treat such children differently from their siblings who were born prior to the wage earner's disability, or from after-born children of old-age beneficiaries.[17] It was apparently the judgment of Congress that the new benefits left little room for abuse, since it was unlikely that a disabled wage earner would conceive children simply for the purpose of economic gain.

With respect to "after-adopted" children of disability beneficiaries, however, Congress was concerned

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[14] The historic purpose is "to replace the support lost by a child when his father retires, dies, or becomes disabled * * *." See, *e.g.*, S. Rep. No. 404, 89th Cong., 1st Sess., p. 110; S. Rep. No. 92–1230, 92d Cong., 2d Sess., p. 141; H. Rep. No. 92–231, 92d Cong., 1st Sess., p. 52.

[15] See 42 U.S.C. 402(d)(1)(C)(i) (1958 ed.). There were at that time no similar restrictions with respect to children of old-age beneficiaries. See 42 U.S.C.(d)(1)(C)(ii) (1958 ed.).

[16] Social Security Amendments of 1960, Pub. L. 86–778, § 201(a), 74 Stat. 946, amending Section 202(d)(1)(C) of the Act. See 42 U.S.C. 402(d)(1)(C) (1964 ed.).

[17] See S. Rep. No. 1856, 86th Cong., 2d Sess., pp. 36, 72; H. Rep. No. 1799, 86th Cong., 2d Sess., pp. 33, 84.

that automatic entitlement to child's benefits could lead to adoptions motivated principally by economic gain and not in the interest of the child's welfare. Therefore, while the 1960 amendments extended benefits to after-adopted children, Congress attached safeguards designed to minimize the potential for abuse.[18] It thus provided that benefits would be available only if the after-adopted child had been living with the wage earner before the onset of the disability (or if adoption proceedings had commenced by then) and if the adoption was decreed within two years after the disability entitlement.[19] In 1965, when Congress attached similar conditions to the benefits for after-adopted children of *old-age* beneficiaries,[20] it reiterated that the intent was to provide "safeguards against abuse through adoption of children solely to qualify them

[18] The stated purpose was "to limit payment of benefits to cases where it is generally reasonable to assume that the disabled worker, before the disability benefits were payable, had intended to adopt the child." Hearings on H.R. 12580 before the Senate Committee on Finance, 86th Cong., 2d Sess., p. 467. See generally H. Rep. No. 1799, 86th Cong., 2d Sess., pp. 33, 84–85; S. Rep. No. 1856, 86th Cong., 2d Sess., pp. 36, 72; H. Rep. (Conf. Rep.) No. 2165, 86th Cong., 2d Sess., pp. 19–20; Hearings on H.R. 12580, *supra*, pp. 15, 466–467; 106 Cong. Rec. 16884, 16889.

[19] Social Security Amendments of 1960, Pub. L. 86–778, § 201 (b), 74 Stat. 946, adding a new sentence at the end of Section 202(d)(1) of the Act. See 42 U.S.C. 402(d)(1) (1964 ed.). These provisions were transferred in 1965 without substantive change to a new Section 202(d)(9). Pub. L. 89–97, § 323(a), 79 Stat. 397–398. The Section was later renumbered 202(d)(8). See 42 U.S.C. 402(d)(8).

[20] Social Security Amendments of 1965, Pub. L. 89–97, § 323 (a)(2), 79 Stat. 397–398, adding a new Section 202(d)(10), later renumbered 202(d)(9). See 42 U.S.C. 402(d)(9).

for benefits * * *." S. Rep. No. 404, 89th Cong., 1st Sess., p. 108. This legislative purpose has been recognized and approved by the lower courts. See, *e.g.*, *Hagler* v. *Finch*, 451 F. 2d 45, 48 (C.A. 9), certiorari denied, 405 U.S. 1071; *Rowe* v. *Finch*, 427 F. 2d 417, 419 (C.A. 4); *Craig* v. *Finch*, 425 F. 2d 1005, 1009 (C.A. 5).

In 1967, Congress reviewed again the statutory conditions on benefits for after-adopted children of disability beneficiaries. Senator Allott, author of the challenged provisions, stated on the Senate floor that in his view the feared abuses did not fully justify all the Act's restrictions. 113 Cong. Rec. 33196. He referred to the case of a recently-married disabled veteran who was entitled to disability insurance benefits but who could not obtain benefits for his adopted child because the adoption had taken place more than two years after the veteran's own disability entitlement. 113 Cong. Rec. 33197. Senator Allott proposed an amendment that would cover this case and others, but with limitations designed to provide assistance "only for good faith adoptions." 113 Cong. Rec. 33196. Under his amendment, which was conceived as an alternative rather than as a replacement for the existing two-year cut-off provision, Senator Allott explained (113 Cong. Rec. 33196):

> * * * a child who is adopted by a person receiving disability benefits could qualify for child's benefits if first, the adoption took place under the supervision of a public or private child placement agency; second, the adoption was decreed by a court of competent jurisdiction * * *.

Senator Curtis, who also spoke for the amendment, made the following comment pertaining to its two principal conditions (113 Cong. Rec. 33197):

> I believe that the amendment will not invite abuses. I believe, on the other hand, that it will take care of some very worthy cases, although they are not very many in number.
>
> I think that Congress can rely on the fact that the adoption of children is not taken lightly by the courts. Neither is the adoption of children taken lightly by public and private child placement agencies. I think those two conditions can only be met when there are other substantial reasons for the adoption.

Senator Allott added: "I think that the limitation which I have placed in the amendment will keep the amendment from ever being abused. If it were abused, I would be the first to ask for a modification of the amendment." 113 Cong. Rec. 33197. The amendment was adopted and became Section 202(d)(8)(E) of the Act, 42 U.S.C. 402(d)(8)(E).[21]

Under the applicable constitutional standards (pp. 12–13, *supra*), this amendment satisfies the due process clause of the Fifth Amendment. The legislative goal—minimizing adoptions undertaken solely to qualify for Social Security benefits—is a legitimate one. In extending federal benefits to a class of persons, Congress may properly seek to reduce the likelihood that the promise of benefits will invite abuses. Here, Congress determined that it had an obligation, in provid-

[21] Social Security Amendments of 1967, Pub. L. 90-248, § 112(a), 81 Stat. 838–839. See also H. Rep. (Conf. Rep.) No. 1030, 90th Cong., 1st Sess., p. 39.

ing child's benefits for after-adopted children, to protect against adoptions motivated principally by the hope of economic gain rather than by an interest in the child's welfare.

While reasonable men may disagree about the best way to accomplish this purpose, the means chosen by Congress in the 1968 amendments were rationally related to the achievement of the legislative goal. The Congress could reasonably determine that the combined safeguards of professional supervision by a specialized agency and a formal judicial decree of adoption would provide the necessary assurance that the adoption was in the child's best interest. It could properly conclude also that either safeguard standing alone would not be sufficient.

Supervision by a child-placement agency may be a generally reliable precautionary measure, but its reliability is enhanced by requiring in addition the detached scrutiny of a judicial officer in a formal proceeding. Similarly, while a court is unlikely to approve an adoption unless satisfied that it is *bona fide* and not merely expedient,[22] courts are not the best equipped institutions to investigate and supervise adoptions. The detached and cautious judgment of a court could reasonably be deemed more reliable when

[22] See, *e.g.*, *Gutierrez* v. *New Mexico Dept. of Public Welfare*, 74 N.M. 273, 393 P. 2d 12, where the court reversed an adoption decree because the evidence indicated that the sole reason for the grandfather's adoption of his grandchildren was to increase his Social Security benefits.

based upon the report of a child-placement or adoption agency which specializes in such matters.[23]

It was on the basis of this reasoning that the Ninth Circuit, in *Hagler* v. *Finch,* 451 F. 2d 45, certiorari denied, 405 U.S. 1071, upheld the provision against constitutional attack. The court stated (451 F. 2d at 48):

> The statutory scheme rests upon a reasonable basis, since its two step procedure provides a greater likelihood of careful screening to prevent abuse of the Act. This minimal rational basis is all the Constitution requires of a statute in the area of economics and social welfare. * * * [24]

The fact that the specific abuse against which Congress sought to guard in the statute may not exist in this particular case does not justify either invalidating the statute in the particular application or creating an *ad hoc* exception to its general provisions. "[I]f evils disclosed themselves which entitled Congress to legislate as it did, Congress had power to legislate generally, unlimited by proof of the existence of the evils in each

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[23] Petitioner's argument that the requirement of professional supervision is "superfluous" (Br. 41) is appropriately addressed to the Congress rather than the Court, for it relates to the wisdom, not the rationality, of the legislation.

[24] In *Hagler* the adoption decree was predicated on an investigation by a court-employed "Adoption Examiner." This did not satisfy the statute, however, because the examiner did not represent a child-placement agency. The court recognized, in sustaining the statutory requirement, that "many courts no doubt lack the time and resources effectively to inquire into parents' qualifications" (451 F. 2d at 48).

particular situation." *North American Co.* v. *Securities and Exchange Commission,* 327 U.S. 686, 710–711.

B. THE PROVISIONS DID NOT UNCONSTITUTIONALLY DISCRIMINATE AGAINST ADOPTED CHILDREN

Petitioner argues here, for the first time, that former Section 202(d)(8)(E) invidiously discriminates against adopted children (Br. 20–40).[25] He relies principally upon this Court's recent decisions in *Weber* v. *Aetna Casualty & Surety Co.,* 406 U.S. 164, and *Stanley* v. *Illinois,* 405 U.S. 645. Neither *Weber* nor *Stanley,* however, requires that the statute here be struck down.

In *Weber,* the Court invalidated under the equal protection clause a provision of Louisiana's workmen's compensation law that accorded death benefits to unacknowledged illegitimate children on a different basis than to legitimate and acknowledged illegitimate children. The justification advanced in support of the legislative classification was that it furthered the State's interest in protecting "legitimate family relationships." The Court, however, found no basis for concluding that the statute would promote that objec-

[25] The issue was neither argued nor decided in the courts below. The only constitutional issue petitioner has heretofore raised was whether the statute unconstitutionally discriminated between counties with local child-placement services and those without such services (see pp. 23–25, *infra*). This Court ordinarily does not consider issues presented here for the first time. *Lawn* v. *United States,* 355 U.S. 339, 362–363, n. 16; *United States* v. *New York Telephone Co.,* 326 U.S. 638, 650–651, n. 18.

tive; it was unreasonable to think that "persons will shun illicit relations because the offspring may not one day reap the benefits of workmen's compensation" (406 U.S. at 173). Nor did the classification bear any significant relationship to the recognized purposes served by workmen's compensation laws (*id.* at 175). The classification was but another manifestation of Louisiana's "pattern of discrimination" against illegitimates (*id.* at 172).[26]

We have already shown that the statute here was reasonably related to the proper legislative objective of granting child's benefits to adopted children while protecting against adoptions solely for economic gain. The provisions of the Act were not part of any pervasive policy of discrimination against adopted children. On the contrary, they were designed to protect the interests of adopted children by discouraging economically motivated adoptions not in the child's best interests.

In *Stanley* v. *Illinois, supra,* this Court invalidated under the Fourteenth Amendment an Illinois statute under which the children of unmarried fathers were, on the mother's death, declared state wards and placed in guardianship without any prior hearing on the father's fitness and without any proof of neglect. The Court held that, in view of the "essential" interest of

[26] This Court had previously ruled three times on the constitutionality of Louisiana statutory discriminations based on illegitimacy. *Levy* v. *Louisiana*, 391 U.S. 68; *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73; *Labine* v. *Vincent*, 401 U.S. 532.

a father in his own children [27] and the absence of any substantial state interest in separating children from fathers without a hearing as to fitness, a hearing would be required under the due process clause (405 U.S. at 649–658). It reasoned that since the State assumed custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect, the denial of a hearing to unmarried fathers violated the equal protection clause.

There is here no interest at stake approaching that of a father whose child is to be taken from him by the State. The statute merely established standards to ensure that the availability of child's benefits did not invite abuse through economically motivated adoptions. A family's interest in child's insurance benefits is economic and is therefore not entitled to the exceptional protections afforded to fundamental interests. Section 202(d)(8)(E) reflected a permissible congressional determination that the supervision of a child-placement agency and the decree of a local court were the appropriate methods for determining the *bona fides* of the adoption and for preventing abuse.

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[27] The Court stated (*id.* at 651):

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring).

The legislature is free within the limits of reasonableness to make "rough accommodations" in solving practical problems, and its judgment will not be upset in matters of economics or social welfare merely because the resulting provision may affect some to whom the rationale does not in logic apply or may fail to reach some to whom the rationale should apply. See *Dandridge* v. *Williams*, 397 U.S. 471, 485; *Flemming* v. *Nestor*, 363 U.S. 603, 612.[28]

C. THE PROVISIONS DID NOT UNCONSTITUTIONALLY DISCRIMINATE AGAINST RESIDENTS OF COUNTIES WITHOUT LOCAL CHILD-PLACEMENT AGENCIES

If, as we have argued, the requirement that an adoption be supervised by a child-placement agency was a reasonable way to accomplish a legitimate governmental objective, then the statute would not violate the due process clause even though some political subdivisions lacked child-placement facilities. Congress could properly condition benefits upon the added assurance of professional supervision, notwithstanding

[28] The other cases relied on by petitioner are inapposite. *Carrington* v. *Rash*, 380 U.S. 89, held that a state could not deny the fundamental right to vote "because of some remote administrative benefit" (380 U.S. at 96). *Bell* v. *Burson*, 402 U.S. 535, applied to a state statute which required suspension of a driver's license without a determination of fault the familiar rule that "relevant constitutional restraints limit state power to terminate an entitlement" (402 U.S. at 539). In *Reed* v. *Reed*, 404 U.S. 71, a state statutory preference for men over women as administrators of estates was struck down because it was unreasonable to prefer men when men and women were equally capable of performing the duties of an administrator.

that some persons might have no access to such supervision.

But this case does not present that issue. At the time petitioner adopted his granddaughter (more than a year before the provisions in question were enacted), state law required that the adoption take place in the adopting parents' county of residence,[19] and Raleigh County had no local child-placement agency (Tr. 113; App. 34). But petitioner was not without access to suitable child-placement services. The federal statute did not specify that the child-placement agency supervising the adoption must be a local one. There was nothing to foreclose supervision[20] by a public or private agency based in another county, or by the West Virginia State Department of Welfare which, as petitioner concedes (Br. 41–42), does function as a statewide child-placement agency.

Nor does this record contain anything to suggest that such services were unavailable to petitioner at the time of the adoption. Indeed, what little there is suggests that the State Department of Welfare could have provided the necessary services; the Boone County office of that agency did conduct a post-adoption investigation of petitioner's home in connection with his daughter's divorce decree.[21] Moreover, as

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[19] W. Va. Code § 48–4–1 (Michie 1966). See App. 48, 53.

[20] Under the Social Security Administration's regulations, "supervision of a public or private child-placement agency" was accomplished if the agency was "significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent * * *." 20 C.F.R. 404.323(c)(3).

[21] The record shows that in August 1967 a Welfare Department Social Worker from neighboring Boone County visited

the court below found (App. 55), and as petitioner concedes (Br. 42), the child could have been "relinquished" to the state agency for placement in petitioner's home after an investigation.[32]

Of course, petitioner had no reason in 1966 to seek the services of a child-placement agency, because state law did not require it and the federal statute had not yet been enacted. But those considerations do not support petitioner's argument that the federal statute discriminated against residents of counties lacking local child-placement services. Petitioner was disadvantaged, if at all, by the prospective nature of the 1968 amendment, not by any supposed inability to secure the services of a qualified agency.

On this record, therefore, there is no basis to conclude that appropriate child-placement services were unavailable to petitioner in 1966; and there is consequently no reason to reach the question whether such unavailability would render unconstitutional an otherwise reasonable legislative classification.

III

THE SOCIAL SECURITY ADMINISTRATION'S REGULATION DEFINING CHILD-PLACEMENT AGENCY TO EXCLUDE COURTS WAS A VALID IMPLEMENTATION OF THE STATUTE

Section 202(d)(8)(E) permitted the payment of benefits for after-adopted children whose adoption took place under the supervision of a child-placement

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petitioner's home to conduct a divorce and custody investigation for an Ohio court (Tr. 112; App. 35).

[32] See W. Va. Code § 49-3-1 (Michie 1966).

agency *and* was decreed by a court. The Social Security Administration's implementing regulation, issued soon after the statutory provisions were enacted, defined the term "public child-placement agency" as

> any governmental agency authorized by a State * * * or local governmental agency or component of either to place children in a private home for adoption. *The term does not include a court; it also does not include a court investigator,* juvenile officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption. [20 C.F.R. 404.323(c)(1); emphasis added.]

Petitioner argues (Br. 50–52) that this regulation, insofar as it excluded courts from the definition of child-placement agency, was arbitrary and invalid. In view of the plain language of the statute and the congressional intent as indicated by the legislative history (see pp. 16–19, *supra*), the court below properly held that the Administration's contemporaneous construction of the child-placement requirement was reasonable and fully consistent with the statute. Cf. *Fawcus Machine Co.* v. *United States,* 282 U.S. 375, 378; *Brasher* v. *Celebrezze,* 340 F. 2d 413, 418 (C.A. 8). It was reasonable to interpret the statute as requiring in every case both a formal adoption decree *and* independent supervision by a professional agency specializing in child-placement. It was reasonable also to provide that courts and court investigators did not qualify as specialized child-placement agencies within

the meaning of the statute, for if they did the congressional purpose of requiring double assurance would have been frustrated.[23]

The other courts of appeals that have considered the issue are in accord with the court below that the regulation was valid. *Hagler* v. *Finch*, 451 F. 2d 45 (C.A. 9), certiorari denied, 405 U.S. 1071; *Braudt* v. *Richardson*, No. 72–1030, C.A. 6, decided May 8, 1972. The district courts have reached the same conclusion. *Gillums* v. *Secretary of Health, Education & Welfare*, 331 F. Supp. 204 (D. Md.); *Keys* v. *Richardson*, 325 F. Supp. 459 (E.D. Tenn.); *Griffith* v. *Finch*, 319 F. Supp. 548 (E.D. Tenn.).[24]

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[23] In this case the adoption was decreed by the Criminal Court of Raleigh County, sitting as a juvenile court. See note 2, *supra*. The town policeman, appointed by the court to conduct an investigation, was not a professional child-placement specialist.

Petitioner states that juvenile courts in West Virginia have "statutory authority to supervise the placement of children in suitable homes," citing W. Va. Code § 49–5–14 (Michie 1966) (Br. 15). While that Section authorizes juvenile courts to "[c]ommit [a] child to the care and custody of some suitable person," that authority is limited to petitions for disposition of suspected delinquents. See W. Va. Code § 49–5–7 (Michie 1966).

[24] Petitioner makes two additional arguments in his brief, neither of which was presented to or ruled upon in the court of appeals. He argues that Section 202(d)(8) should be ignored because benefits were otherwise payable under Sections 202(d)(1) and 202(d)(3) (Br. 48–50). This contention, which was accepted by the Social Security hearing examiner (note 6, *supra*) and rejected by the Appeals Council (note 7, *supra*), is without merit. Section 202(d)(8) by its own terms qualified paragraph (d)(1), which states only the general rule that benefits are payable to children dependent on the beneficiary. Paragraph (d)(8) provided that after-adopted children "shall be deemed not to meet the requirements of clause (i)

CONCLUSION

For reasons set forth in Part I, the writ of certiorari should be dismissed. Alternatively, for the reasons set forth in Parts II and III, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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JANUARY 1973.

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or (iii) of paragraph (1)(C)" unless they fit one of the specified categories. To ignore paragraph (d)(8) would be to distort plain congressional intent.

Second, petitioner argues (Br. 43–47) that former Section 202(d)(8)(E) unconstitutionally interfered with West Virginia adoption laws and policy. The federal statute, however, does not attempt to control the State's adoption policies; it merely attaches certain federal consequences to those policies. In any event, if a federal statute is reasonably related to a proper governmental purpose, it is constitutional notwithstanding that it may effect a policy different from that of a State. See, *e.g.*, *Case* v. *Bowles*, 327 U.S. 92, 102.

APPENDIX

1. Section 202(d)(1) of the Social Security Act, 42 U.S.C. 402(d)(1), provides in pertinent part:

> (d)(1) Every child * * * of an individual entitled to old-age or disability insurance benefits * * *, if such child—
>
> (A) has filed application for child's insurance benefits,
>
> (B) * * *
>
> (C) was dependent upon such individual—
>
> (i) if such individual is living, at the time such application was filed,
>
> * * * * *
>
> shall be entitled to a child's insurance benefit * * *

2. Section 202(d)(8) of the Social Security Act, 42 U.S.C. 402(d)(8) (1970 ed.), provided in pertinent part:

> (d)(8) In the case of—
>
> (A) an individual entitled to disability insurance benefits, * * *
>
> (B) * * *
>
> a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) of this subsection unless such child—
>
> (C) * * *
>
> (D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual * * * or

(ii) such adopted child was living with such individual in such month; or

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child placement agency.

(ii) in an adoption decreed by a court of competent jurisdiction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

(iv) at a time prior to the attainment of age 18 by such child.

3. Section 202(d)(8) was amended on October 30, 1972, by Section 111(a) of the Social Security Amendments of 1972, Public Law 92-603, 86 Stat. 1329, 1346. The present version of Section 202(d)(8) provides in pertinent part:

In the case of—

(A) * * *

(B) an individual entitled to disability insurance benefits * * *

a child of such individual adopted after such individual became entitled to such * * * disability insurance benefits shall be deemed not to meet the requirements of clause (i) * * * of paragraph (1)(C) unless such child—

(C) * * *

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual * * * for the year immediately before * * * the month in which such individual became entitled to disability insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

* * * * *

4. Section 404.323(c) of Social Security Administration Regulation No. 4, 20 C.F.R. 404.323(c), provides in pertinent part:

(c) *Adoption under the supervision of a public or private child-placement agency.*

(1) *Public child-placement agency.*—For the purposes * * * of this section, the term "public child-placement agency" means any governmental agency authorized by a State * * * or local governmental agency or component of either to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption.

(2) *Private child-placement agency.*—For the purposes * * * of this section, the term "private child-placement agency" means any individual, corporation, organization, or institution licensed or approved by a State or local governmental agency or component of either to place children in a private home for adoption. * * *

(3) *Supervision by a child-placement agency.*—For purposes of * * * this section,

the term "supervision of a public or private child-placement agency" means that such agency as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations based on such suitability and eligibility, to the court having jurisdiction of the adoption proceedings. This requirement is not met if such investigation, report, or recommendation by such agency was not made, whether because it was waived, or because it is not required under applicable State law, or for any other reason.

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(Slip Opinion)

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SUPREME COURT OF THE UNITED STATES

No. 71-6698

Marion P. Morris, on behalf of Linda Morris, Petitioner, *v.* Caspar W. Weinberger, Secretary of Health, Education, and Welfare.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February 22, 1973]

PER CURIAM.

Twenty days after this Court granted a writ of certiorari, Congress repealed the relevant statutory provisions, § 202 (d)(8) of the Social Security Act, 42 U. S. C. § 402 (d)(8). See § 111 (a), Social Security Amendments of 1972 (Oct. 30, 1972), Pub. L. 92-603, 86 Stat. 1329. The writ of certiorari heretofore granted is dismissed as improvidently granted.

SUPREME COURT OF THE UNITED STATES

No. 71-6698

Marion P. Morris, on behalf of Linda Morris, Petitioner, v. Caspar W. Weinberger, Secretary of Health, Education, and Welfare.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February 22, 1973]

MR. JUSTICE DOUGLAS, dissenting.

In this case, petitioner was denied social security benefits for his dependent adoptive daughter because her court-approved adoption was not supervised by a child-placement agency. As noted by the Court, the section which barred his claim at the time that it was filed has now been repealed.[1] What the Court does not deal with, however, is the patchwork nature of the relief that Congress has provided.

Section 111 (b) of the new Act[2] specifies the dates and circumstances to which § 111 (a)[3] applies. As I read § 111 (b), should petitioner qualify for increased

[1] Social Security Amendment of 1972, Pub. L. 92-603, 86 Stat. 1329, § 111.

[2] "The amendment made by subsection (a) shall apply with respect to monthly benefits payable under title II of the Social Security Act for months after December 1967 on the basis of an application filed in or after the month in which this Act is enacted; except that such amendments shall not apply with respect to benefits for any month before the month in which this Act is enacted unless such application is filed before the close of the sixth month after the month in which this Act is enacted."

[3] The relevant portion of that section reads:

"In the case of—

"(A) . . . .

"(B) an individual entitled to disability insurance benefits . . . .

"a child of such individual adopted after such individual became entitled to such . . . benefits shall be deemed not to meet the re-

benefits under § 111 (a)'s new standards he could now secure retroactive application of the revised Act to cover the entire period at issue in this case. It is true that § 111 (a) no longer requires that court-authorized adoptions be supervised by a child-placement agency. Petitioner's lot is not, however, bettered since § 111 (a) now imposes a new requirement which petitioner cannot meet: that benefits may be paid to an adopted child only if the child was living with the beneficiary "for the year immediately before the month in which began the period of [compensable] disability . . . ." § 111 (a)(D)(ii)(II). Petitioner began receiving disability insurance benefits in July 1957. His adopted daughter was not born until 1965, however, and petitioner will accordingly not benefit under the terms of § 111 (a).

Section 111 (b) does not repeal 42 U. S. C. § 402 (d)(8) (1970 ed.) as to applications filed *before* October 1972 for benefits accruing before October 30, 1972. Such an application is before us in this case. Petitioner is therefore entitled to benefits under the former statute, if there is merit to his claim that the old § 402 (d)(8)'s distinctions among types of adoption supervision are constitutionally infirm.

Because the new Act does not provide coverage for petitioner's child but the old Act remains applicable to the claim before us, I would reach the merits.

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quirements of clause (i) . . . of paragraph (1)(C) unless such child—

"(C) . . . .

"(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, . . .

"(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual . . . for the year immediately before . . . the month in which such individual became entitled to disability insurance benefits, and

"(iii) had not attained the age of 18 before he began living with such individual."